

105TH CONGRESS
1ST SESSION

H. R. 1745

To reform asset forfeiture laws.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1997

Mr. SCHUMER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform asset forfeiture laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the Forfeiture Act of 1997.

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1 **TITLE I—ADMINISTRATIVE FORFEITURES**

2 **SEC. 101. TIME FOR FILING CLAIM; WAIVER OF COST BOND.**

3 (a) IN GENERAL.—Section 608 of the Tariff Act of
 4 1930 (19 U.S.C. 1608) is amended to read as follows:

5 **“§ 608. Seizures; claims; judicial condemnation**

6 “(a) Any person claiming seized property may file a
 7 claim with the appropriate customs officer at any time
 8 after the seizure: *Provided*, That such claim must be filed
 9 not later than 30 days after the final publication of notice
 10 of seizure. The claim shall be signed by the claimant under
 11 penalty of perjury and shall contain a brief statement of

1 the nature and extent of the claimant's ownership interest
2 in the property and how and when it was acquired.

3 “(b) Any claim filed pursuant to subsection (a) shall
4 include the posting of a bond to the United States in the
5 sum of \$5,000 or 10 percent of the value of the claimed
6 property, whichever is lower, but not less than \$250, with
7 sureties to be approved by the customs officer with whom
8 the claim is filed. No bond shall be required, however, if
9 the property is seized by the Attorney General and con-
10 sists of currency or other monetary instruments, or if the
11 claim is filed in forma pauperis with all supporting infor-
12 mation as required by the seizing agency. The Attorney
13 General and the Secretary of the Treasury, with respect
14 to matters within their respective jurisdiction, shall have
15 the authority to waive or reduce the bond requirement in
16 any additional category of cases where he or she deter-
17 mines that the posting of a bond is not required in the
18 interests of justice.

19 “(c) Upon the filing of a claim pursuant to this sec-
20 tion, the customs officer shall transmit the claim, with a
21 duplicate list and description of the articles seized, to the
22 United States attorney for a district in which a forfeiture
23 action could be filed pursuant to section 1355(b) of title
24 28, United States Code, who shall proceed to a condemna-
25 tion of the merchandise or other property in the manner

1 prescribed in the Supplemental Rules for Certain Admi-
 2 ralty and Maritime Claims.”

3 (b) CONFORMING AMENDMENT.—Section 609 of the
 4 Tariff Act of 1930 (19 U.S.C. 1609) is amended by strik-
 5 ing “twenty” and inserting “30”.

6 **SEC. 102. JURISDICTION AND VENUE.**

7 (a) TRANSMITTAL TO THE UNITED STATES ATTOR-
 8 NEY.—Section 610 of the Tariff Act of 1930 (19 U.S.C.
 9 1610) is amended by striking “the district in which the
 10 seizure was made” and inserting “a district in which a
 11 forfeiture action could be filed pursuant to section 1355(b)
 12 of title 28, United States Code”.

13 (b) ADMIRALTY RULES.—The Supplemental Rules
 14 for Certain Admiralty and Maritime Claims are amend-
 15 ed—

16 (1) in rule E(3), by inserting the following at
 17 the end of paragraph (a): “This provision shall not
 18 apply in forfeiture cases governed by 28 U.S.C.
 19 1355 or any other statute providing for service of
 20 process outside of the district.”; and

21 (2) in rule C(2), by inserting the following after
 22 “that it is within the district or will be during the
 23 pendency of the action.”: “If the property is located
 24 outside of the district, the complaint shall state the

1 statutory basis for the court’s exercise of jurisdiction
2 over the property”.

3 **SEC. 103. JUDICIAL REVIEW OF ADMINISTRATIVE FORFEIT-**
4 **URES.**

5 Section 609 of the Tariff Act of 1930 (19 U.S.C.
6 1609) is amended by adding the following new subsection:

7 “(d)(1) Where no timely claim to the seized property
8 is filed, and a declaration of forfeiture is entered pursuant
9 to this section by the seizing agency, the declaration shall
10 be final and not subject to judicial review under any other
11 provision of law except as follows: If a claimant, upon the
12 filing of an action to set aside a declaration of forfeiture
13 under this section, establishes by a preponderance of the
14 evidence (A) that the seizing agency failed to take reason-
15 able steps to provide the claimant with notice of the for-
16 feiture, and (B) that the claimant had no actual notice
17 of the forfeiture proceeding within the period for filing a
18 claim, the district court shall order that the declaration
19 of forfeiture be set aside pending forfeiture proceedings
20 in accordance with sections 602 et seq.

21 “(2) The following shall be considered sufficient, but
22 not necessary, to satisfy the requirement of taking reason-
23 able steps to provide notice of the forfeiture:

1 “(A) sending, by mail or commercial carrier,
2 notice of the forfeiture to the place where the claim-
3 ant resides at the time the notice is sent;

4 “(B) serving notice of the forfeiture on the
5 claimant’s attorney of record in the forfeiture case
6 or in a related criminal case.

7 “(3) An action to set aside a declaration of forfeiture
8 under this section must be filed within 2 years of the last
9 date of publication of notice of the forfeiture of the prop-
10 erty.”

11 **SEC. 104. JUDICIAL FORFEITURE OF REAL PROPERTY.**

12 Section 610 of the Tariff Act of 1930 (19 U.S.C.
13 1610) is amended by adding at the end the following sen-
14 tence. “Notwithstanding any other provision of law, all
15 forfeitures of real property and interests in real property
16 shall proceed as judicial forfeitures as provided in this sec-
17 tion.”

18 **SEC. 105. PRESERVATION OF ARRESTED REAL PROPERTY.**

19 Rule E of the Supplemental Rules for Certain Admi-
20 ralty and Maritime Claims is amended by adding the fol-
21 lowing new subsection:

22 “(10) PRESERVATION OF PROPERTY.—When-
23 ever property is attached or arrested pursuant to the
24 provisions of Rule E(4)(b) that permit the marshal
25 or other person having the warrant to execute the

1 process without taking actual possession of the prop-
2 erty, and the owner or occupant of the property is
3 thereby permitted to remain in possession, the court,
4 on the motion of any party or on its own motion,
5 shall enter any order necessary to preserve the value
6 of the property, its contents, and any income derived
7 therefrom, and to prevent the destruction, removal
8 or diminution in value of such property, contents
9 and income. If the order is made necessary by exi-
10 gent circumstances, or if the order would not inter-
11 fere with the owner or occupant's use or enjoyment
12 of the property, it may be entered ex parte. Other-
13 wise the order may be entered only after notice and
14 an opportunity to be heard.”

15 **SEC. 106. AMENDMENT TO FEDERAL TORT CLAIMS ACT EX-**
16 **CEPTIONS.**

17 Section 2680(c) of title 28, United States Code, is
18 amended to read as follows:

19 “(c) Any claim arising in respect of the assessment
20 or collection of any tax or customs duty, or the detention
21 of any goods, merchandise, or other property by any law
22 enforcement officer performing any official law enforce-
23 ment function, except that the provisions of this chapter
24 and section 1346(b) of this title shall apply to any claim
25 based on the loss of, or negligent destruction or injury to,

1 goods, merchandise, or other tangible property while in the
2 possession, custody or control of any law enforcement
3 agency, if the property was seized for the purpose of for-
4 feiture and is neither forfeited nor the subject of a pending
5 forfeiture proceeding. For purposes of this subsection, the
6 definition of “law enforcement officer” in subsection (h)
7 shall apply.”

8 **SEC. 107. PRE-JUDGMENT INTEREST.**

9 (a) IN GENERAL.—Section 2465 of title 28, United
10 States Code, is amended by—

11 (1) designating the present matter as sub-
12 section (a); and

13 (2) inserting the following new subsection:

14 “(b) INTEREST.—Upon entry of judgment for the
15 claimant in any proceeding to condemn or forfeit property
16 seized or arrested under any Act of Congress, the United
17 States shall be liable for post-judgment interest as set
18 forth in section 1961 of this title. The United States shall
19 not be liable for pre-judgment interest, except that in
20 cases involving currency or other negotiable instruments,
21 the United States shall disgorge to the claimant any funds
22 representing interest actually paid to the United States
23 from the date of seizure or arrest of the property that
24 resulted from the investment of the property in an inter-
25 est-bearing account or instrument. The United States

1 shall not be required to disgorge the value of any intangi-
2 ble benefits nor make any other payments to the claimant
3 not specifically authorized by this subsection.”

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to any judgment entered after
6 the date of enactment of this Act.

7 **SEC. 108. SEIZURE WARRANT REQUIREMENT.**

8 (a) IN GENERAL.—Section 981(b) of title 18, United
9 States Code, is amended to read as follows—

10 “(b)(1) Any property subject to forfeiture to the
11 United States under this section may be seized by the At-
12 torney General. In addition, in the case of property in-
13 volved in a violation investigated by the Secretary of the
14 Treasury or the United States Postal Service, the property
15 may also be seized by the Secretary of the Treasury or
16 the Postal Service, respectively.

17 “(2) Seizures pursuant to this section shall be made
18 pursuant to a warrant obtained in the same manner as
19 provided for a search warrant under the Federal Rules
20 of Criminal Procedure, except that a seizure may be made
21 without a warrant, if—

22 “(A) a complaint for forfeiture has been filed in
23 the district court and the court has issued an arrest
24 warrant in rem pursuant to the Supplemental Rules
25 for Certain Admiralty and Maritime Claims;

1 “(B) the seizure is made pursuant to a lawful
2 arrest or search, or if there is probable cause to be-
3 lieve that the property is subject to forfeiture and
4 another exception to the Fourth Amendment war-
5 rant requirement would apply; or

6 “(C) the property was lawfully seized by a state
7 or local law enforcement agency and has been trans-
8 ferred to a Federal agency in accordance with State
9 law.”

10 “(3) Notwithstanding the provisions of rule 41(a),
11 Federal Rules of Criminal Procedure, a seizure warrant
12 may be issued pursuant to this subsection by a judicial
13 officer in any district in which a forfeiture action against
14 the property may be filed under section 1355(b) of title
15 28, United States Code, and executed in any district in
16 which the property is found. Any motion for the return
17 of property seized under this section shall be filed in the
18 district in which the seizure warrant was issued.

19 “(4) In the event of a seizure pursuant to paragraph
20 (2) of this subsection, proceedings under subsection (d)
21 of this section or an applicable criminal forfeiture statute
22 shall be instituted as soon as practicable, taking into ac-
23 count the status of any criminal investigation to which the
24 seizure may be related.

1 “(5) If any person is arrested or charged in a foreign
2 country in connection with an offense that would give rise
3 to the forfeiture of property in the United States under
4 this section or under the Controlled Substances Act, the
5 Attorney General may apply to any Federal judge or mag-
6 istrate judge in the district where the property is located
7 for an ex parte order restraining the property subject to
8 forfeiture for not more than 30 days, except that the time
9 may be extended for good cause shown at a hearing con-
10 ducted in the manner provided in rule 43(e), Federal
11 Rules of Civil Procedure. The application for the restrain-
12 ing order shall set forth the nature and circumstances of
13 the foreign charges and the basis for belief that the person
14 arrested or charged has property in the United States that
15 would be subject to forfeiture, and shall contain a state-
16 ment that the restraining order is needed to preserve the
17 availability of property for such time as is necessary to
18 receive evidence from the foreign country or elsewhere in
19 support of probable cause for the seizure of the property
20 under this subsection.

21 “(6) Any owner of property seized pursuant to this
22 section may obtain release of the property pending resolu-
23 tion of the forfeiture action upon payment of a substitute
24 res in an amount equal to the appraised value of the prop-
25 erty, unless the seized property—

1 “(A) is contraband,
2 “(B) is evidence of a violation of the law,
3 “(C) by reason of design or other characteristic,
4 is particularly suited for use in illegal activities, or
5 “(D) is likely to be used to commit additional
6 criminal acts if returned to the owner.

7 The substitute res must be in the form of a traveler’s
8 check, money order, cashier’s check or irrevocable letter
9 of credit made payable to the seizing agency. If such sub-
10 stitute res is provided, the court or in the case of adminis-
11 trative forfeiture, the seizing agency, shall have jurisdic-
12 tion to proceed with the forfeiture of the substitute res
13 in lieu of the property. If, at the conclusion of the forfeit-
14 ure proceeding, the property is declared forfeited, the
15 owner shall surrender the property and recover the sub-
16 stitute res, unless the Attorney General or the seizing
17 agency elects to retain the substitute res in lieu of the
18 property.”

19 (b) DRUG FORFEITURES.—Section 511(b) of the
20 Controlled Substances Act (21 U.S.C. 881(b)) is amended
21 to read as follows:

22 “(b) Any property subject to forfeiture to the United
23 States under this section may be seized by the Attorney
24 General in the manner set forth in section 981(b) of title
25 18, United States Code.

1 “(c) CONFORMING AMENDMENT.—Section 518(d) of
2 the Controlled Substances Act (21 U.S.C. 888(d)) is re-
3 pealed.”

4 **TITLE II—JUDICIAL FORFEITURES**

5 **SEC. 201. TRIAL PROCEDURE FOR CIVIL FORFEITURE.**

6 (a) IN GENERAL.—Chapter 46 of title 18, United
7 States Code, is amended by inserting the following new
8 section:

9 **“§ 987. Judicial forfeiture proceedings**

10 “(a) COMPLAINT.—The Attorney General may file a
11 civil forfeiture complaint in the manner set forth in the
12 Supplemental Rules for Certain Admiralty and Maritime
13 Claims. In cases where the applicable law authorizes the
14 institution of civil and criminal forfeiture proceedings in
15 connection with an offense, the Attorney General shall
16 have the discretion to determine whether to file a civil
17 complaint under this section, a criminal complaint, indict-
18 ment or information including a forfeiture count in accord-
19 ance with the applicable criminal forfeiture statute, or
20 both civil and criminal actions.

21 “(b) TIME FOR FILING COMPLAINT.—(1) If property
22 is seized and a claim is filed pursuant to section 608 of
23 the Tariff Act of 1930 (19 U.S.C. 1608), or if the seizure
24 is referred to the Attorney General pursuant to section
25 610 (19 U.S.C. 1610), the Attorney General shall deter-

1 mine as soon as practicable whether a forfeiture action
2 should be instituted.

3 “(2) If the Attorney General determines not to insti-
4 tute a forfeiture action, he or she shall so advise the seiz-
5 ing agency. A decision not to institute a forfeiture action
6 shall not preclude the seizing agency from transferring or
7 returning the seized property to a State or local law en-
8 forcement authority for appropriate forfeiture action in ac-
9 cordance with State law. Nor shall a decision not to insti-
10 tute a forfeiture action imply that the action of the seizing
11 agency in seizing the property was in any way improper.

12 “(3) If the Attorney General determines that a for-
13 feiture action should be instituted, he or she shall institute
14 such action as soon as practicable, taking into account the
15 status of any criminal investigation to which the forfeiture
16 action may be related.

17 “(c) CLAIM AND ANSWER.—A claim and answer to
18 a civil forfeiture complaint shall be filed in accordance
19 with rule C of the Supplemental Rules for Certain Admi-
20 ralty and Maritime Claims and shall set forth the nature
21 and extent of the claimant’s ownership interest in the
22 property, the time and circumstances of the claimant’s ac-
23 quisition of the interest in the property, and any addi-
24 tional facts supporting the claimant’s standing to file a
25 claim challenging the forfeiture action.

1 “(d) STANDING.—If the Government, at the time of
2 trial or at any time prior to trial, files a motion to dismiss
3 the claim for lack of standing, the court shall conduct a
4 hearing, in the manner provided in rule 43(e), Federal
5 Rules of Civil Procedure, and shall determine whether the
6 claimant has established, by a preponderance of the evi-
7 dence, that he or she has the requisite ownership interest
8 in the property, as defined in section 983(c), to challenge
9 the forfeiture action. If the court determines that a claim-
10 ant lacks standing, it shall dismiss the claim with preju-
11 dice and enter a final judgment as to that claimant.

12 “(e) BURDEN OF PROOF.—At trial in a civil forfeit-
13 ure case, the Government shall have the initial burden of
14 proving that the property is subject to forfeiture by a pre-
15 ponderance of the evidence. If the Government proves that
16 the property is subject to forfeiture, the claimant shall
17 have the burden of proving by a preponderance of the evi-
18 dence that he or she has an interest in the property that
19 is not forfeitable under section 983 of this title. If the
20 Government’s theory of forfeiture is that the property fa-
21 cilitated the commission of a criminal offense, the Govern-
22 ment must establish that there was a substantial connec-
23 tion between the property and the offense.

24 “(f) AFFIRMATIVE DEFENSES.—The claimant shall
25 set forth all affirmative defenses, including constitutional

1 defenses, in his or her answer, as provided in rule 8, Fed-
2 eral Rules of Civil Procedure, and shall comply with dis-
3 covery requests regarding such defenses in advance of
4 trial.

5 “(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At
6 any time after a claim and answer are filed, a claimant
7 with standing to contest the seizure of the property may
8 move to suppress such property in accordance with the
9 normal rules regarding the suppression of evidence. If the
10 claimant prevails on such motion, the property shall not
11 be admitted into evidence as to that claimant at the for-
12 feiture trial. However, a finding that property should be
13 suppressed shall not bar the forfeiture of the property
14 based on evidence obtained independently before or after
15 the seizure.

16 “(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—
17 At any pre-trial hearing under this section, the court may
18 accept and consider hearsay otherwise inadmissible under
19 the Federal Rules of Evidence. The court shall not require
20 the government to reveal the identity of any confidential
21 informant at a pre-trial hearing if there are sufficient indi-
22 cia of reliability regarding such testimony to allow the
23 statement of such informant to be related by a law en-
24 forcement officer.

1 “(i) ADVERSE INFERENCES.—The assertion by the
2 claimant of any fifth amendment privilege against com-
3 pelled testimony in the course of the forfeiture proceeding,
4 including pre-trial discovery, shall give rise to an adverse
5 inference regarding the matter on which such privilege is
6 asserted. The Government may rely on such adverse infer-
7 ence in support of its burden to establish the forfeitability
8 of the property and in response to any affirmative defense.
9 However, the government may not rely solely on such ad-
10 verse inferences to satisfy its burden of proof.

11 “(j) STIPULATIONS.—Notwithstanding the claimant’s
12 offer to stipulate to the forfeitability of the property, the
13 Government shall be entitled to present evidence to the
14 finder of fact on that issue before the claimant presents
15 any evidence in support of any affirmative defense.

16 “(k) PRESERVATION OF PROPERTY SUBJECT TO
17 FORFEITURE.—The court, before or after the filing of a
18 forfeiture complaint and on the application of the Govern-
19 ment, may:

20 “(1) enter any restraining order or injunction
21 pursuant to section 413(3) of the Controlled Sub-
22 stances Act (21 U.S.C. 853(e));

23 “(2) require the execution of satisfactory per-
24 formance bonds;

25 “(3) create receiverships;

1 “(4) appoint conservators, custodians, apprais-
2 ers, accountants or trustees; or

3 “(5) take any other action to seize, secure,
4 maintain, or preserve the availability of property
5 subject to forfeiture under this section.

6 “(1) RELEASE OF PROPERTY TO PAY CRIMINAL DE-
7 FENSE COSTS.—

8 “(1) A person charged with a criminal offense
9 may apply for the release of property seized for for-
10 feiture to pay the necessary expenses of the person’s
11 criminal defense. Such application shall be filed with
12 the court where the forfeiture proceeding is pending.

13 “(2) When an application is filed pursuant to
14 paragraph (1), the burden shall first be upon the ap-
15 plicant to establish that he has no access to other
16 assets adequate for the payment of criminal defense
17 counsel, and that the interest in property to be re-
18 leased is not subject to any claim other than the for-
19 feiture. The Government shall have an opportunity
20 to cross-examine the applicant and any witnesses he
21 or she may present on this issue.

22 “(3) If the court determines that the applicant
23 has met the requirements set forth in paragraph (2),
24 the court shall hold a probable cause hearing at
25 which the applicant shall have the burden of proving

1 the absence of probable cause for the forfeiture of
2 the property. If the court finds that there is no
3 probable cause for the forfeiture, it shall order the
4 release of the assets for which probable cause is
5 lacking. Otherwise, it shall dismiss the application.

6 The court shall not consider any affirmative defenses
7 to the forfeiture at the probable cause hearing.

8 “(m) EXCESSIVE FINES.—At the conclusion of the
9 trial and following the entry of a verdict of forfeiture, the
10 claimant may petition the court to determine whether the
11 excessive fines clause of the eighth amendment applies,
12 and if so, whether forfeiture is excessive. The claimant
13 shall have the burden of establishing that a forfeiture is
14 excessive by a preponderance of the evidence at a hearing
15 conducted in the manner provided in rule 43(e), Federal
16 Rules of Civil Procedure, by the court without a jury. If
17 the court determines that the forfeiture is excessive, it
18 shall adjust the forfeiture to the extent necessary to avoid
19 the Constitutional violation.

20 “(n) APPLICABILITY.—This section shall apply to any
21 judicial forfeiture action brought pursuant to this title, the
22 Controlled Substances Act, or the Immigration and Natu-
23 ralization Act of 1952. Section 615 of the Tariff Act of
24 1930 (19 U.S.C. 1615) shall not apply to forfeitures under

1 this section, nor shall this section apply to forfeitures
2 under the customs laws.

3 “(o) ABATEMENT.—A civil forfeiture action or judg-
4 ment under this or any other provision of federal law shall
5 not abate because of the death of any person.”

6 (b) REBUTTABLE PRESUMPTIONS.—Section 981 of
7 title 18, United States Code, is amended by adding the
8 following new subsection:

9 “(k) REBUTTABLE PRESUMPTIONS.—(1) At the trial
10 of an action brought pursuant to subsection (a)(1)(B),
11 there is a presumption, governed by Rule 301 of the Fed-
12 eral Rules of Evidence, that the property is subject to for-
13 feiture if the United States establishes, by a preponder-
14 ance of the evidence, that such property was acquired dur-
15 ing a period of time when the person who acquired the
16 property was engaged in an offense against a foreign na-
17 tion described in subsection (a)(1)(B) or within a reason-
18 able time after such period, and there was no likely source
19 for such property other than such offense.

20 “(2) At the trial of an action brought pursuant to
21 subsection (a)(1)(A), there is a presumption, governed by
22 rule 301 of the Federal Rules of Evidence, that the prop-
23 erty was involved in a violation of section 1956 or 1957
24 of this title if the United States establishes, by a prepon-
25 derance of the evidence, any three of the following factors:

1 “(A) the property constitutes or is traceable to
2 more than \$10,000 that has been or was intended
3 to be transported, transmitted or transferred to or
4 from a major drug-transit country, a major illicit
5 drug producing country, or a major money launder-
6 ing country, as those terms are determined pursuant
7 to sections 481(e) and 490(h) of the Foreign Assist-
8 ance Act of 1961 (22 U.S.C. 2291(e) and 2291j(h));

9 “(B) the transaction giving rise to the forfeit-
10 ure occurred in part in a foreign country whose bank
11 secrecy laws have rendered the United States unable
12 to obtain records relating to the transaction by judi-
13 cial process, treaty or executive agreement;

14 “(C) a person more than minimally involved in
15 the transaction giving rise to the forfeiture action (i)
16 has been convicted in any State, Federal, or foreign
17 jurisdiction of a felony involving money laundering
18 or the manufacture, importation, sale or distribution
19 of a controlled substance, or (ii) is a fugitive from
20 prosecution for such offense; or

21 “(D) the transaction giving rise to the forfeit-
22 ure action was conducted by, to or through a shell
23 corporation not engaged in any legitimate business
24 activity in the United States.

1 “(3) For the purposes of this paragraph, ‘shell cor-
2 poration’ means any corporation that does not conduct
3 any ongoing and significant commercial or manufacturing
4 business or any other form of commercial operation.

5 “(4) The enumeration of presumptions in this sub-
6 section shall not preclude the development of other judi-
7 cially created presumptions.”

8 (c) CONFORMING AMENDMENT.—Section 274(b)(5)
9 of the Immigration and Naturalization Act (8 U.S.C.
10 1324(b)(5)) is amended—

11 “(1) by striking “the burden of proof shall lie
12 upon such claimant, except that probable cause shall
13 be first shown for the institution of such suit or ac-
14 tion. In determining whether probable cause exists,”;
15 and

16 “(2) by adding at the end the following sen-
17 tence: “The procedures set forth in chapter 46 of
18 title 18, United States Code, shall govern judicial
19 forfeiture actions under this section.”

20 (d) CHAPTER ANALYSIS.—The chapter analysis for
21 chapter 46 of title 18, United States Code, is amended
22 by inserting the following at the appropriate place:

“987. Judicial forfeiture proceedings.”

1 **SEC. 202. UNIFORM INNOCENT OWNER DEFENSE.**

2 (a) IN GENERAL.—Chapter 46 of title 18, United
3 States Code, is amended by inserting after section 982 the
4 following new section:

5 **“§ 983. Innocent owners**

6 “(a) An innocent owner’s interest in property shall
7 not be forfeited in any judicial action under any civil for-
8 feiture provision of this title, the Controlled Substances
9 Act, or the Immigration and Naturalization Act of 1952.

10 “(b)(1) With respect to a property interest in exist-
11 ence at the time the illegal act giving rise to forfeiture
12 took place, a person is an innocent owner if he or she es-
13 tablishes, by a preponderance of the evidence—

14 “(A) that he or she did not know that the prop-
15 erty was being used or was likely to be used in the
16 commission of such illegal act, or

17 “(B) that upon learning that the property was
18 being used or was likely to be used in the commis-
19 sion of such illegal act, he or she promptly did all
20 that reasonably could be expected to terminate or to
21 prevent such use of the property.

22 “(2) With respect to a property interest acquired
23 after the act giving rise to the forfeiture took place, a per-
24 son is an innocent owner if he or she establishes, by a
25 preponderance of the evidence, that he or she acquired the
26 property as a bona fide purchaser for value who at the

1 time of the purchase did not know and was reasonably
2 without cause to believe that the property was subject to
3 forfeiture. A purchaser is “reasonably without cause to be-
4 lieve that the property was subject to forfeiture” if, in
5 light of the circumstances, the purchaser did all that rea-
6 sonably could be expected to ensure that he or she was
7 not acquiring property that was subject to forfeiture.

8 “(3) Notwithstanding any provision of this section,
9 no person may assert an ownership interest under this sec-
10 tion in contraband or other property that it is illegal to
11 possess. In addition, except as set forth in paragraph (2),
12 no person may assert an ownership interest under this sec-
13 tion in the illegal proceeds of a criminal act, irrespective
14 of state property law.

15 “(c) For the purposes of this section—

16 “(1) an “owner” is a person with an ownership
17 interest in the specific property sought to be for-
18 feited, including but not limited to a lien, mortgage,
19 recorded security device or valid assignment of an
20 ownership interest. An owner does not include: (A)
21 a person with only a general unsecured interest in,
22 or claim against, the property or estate of another
23 person; (B) a bailee; (C) a nominee who exercises no
24 dominion or control over the property; or (D) a ben-
25 eficiary of a constructive trust; and

1 “(2) a person shall be considered to have known
2 that his or her property was being used or was likely
3 to be used in the commission of an illegal act if the
4 government establishes the existence of facts and
5 circumstances that should have created a reasonable
6 suspicion that the property was being or would be
7 used for an illegal purpose.

8 “(d) If the court determines, in accordance with this
9 section, that an innocent owner had a partial interest in
10 property otherwise subject to forfeiture, or a joint tenancy
11 or tenancy by the entirety in such property, the court shall
12 enter an appropriate order (1) severing the property; (2)
13 transferring the property to the government with a provi-
14 sion that the government compensate the innocent owner
15 to the extent of his or her ownership interest once a final
16 order of forfeiture has been entered and the property has
17 been reduced to liquid assets, or (3) permitting the inno-
18 cent owner to retain the property subject to a lien in favor
19 of the government to the extent of the forfeitable interest
20 in the property. To effectuate the purposes of this sub-
21 section, a joint tenancy or tenancy by the entireties shall
22 be converted to a tenancy in common by order of the
23 court, irrespective of state law.

24 “(e) If the person asserting a defense under sub-
25 section (b)(1) or (b)(2) is a financial institution, as de-

1 fined in section 20 of this title, there shall be a presump-
 2 tion, governed by rule 301 of the Federal Rules of Evi-
 3 dence, that the institution acted “reasonably” if the insti-
 4 tution establishes that it followed rigorous and regular in-
 5 ternal procedures relating to the approval of any loan or
 6 the acquisition of any property interest in accordance with
 7 the standards for due diligence in the lending industry.
 8 The presumption shall not apply if the government estab-
 9 lishes that the financial institution had notice that the
 10 property was subject to forfeiture before it acquired any
 11 interest in the property.”

12 (b) STRIKING SUPERSEDED PROVISIONS.—(1) Sec-
 13 tion 981(a) of title 18, United States Code, is amended
 14 by—

15 (A) striking subsection (a)(2) and renumbering
 16 any subsections added by this Act accordingly; and

17 (B) striking “Except as provided in paragraph
 18 (2), the” and inserting “The”.

19 (2) Sections 511(a) (4), (6) and (7) of the Controlled
 20 Substances Act (21 U.S.C. 881(a) (4), (6) and (7)) are
 21 amended by striking “, except that” and all that follows,
 22 each time it appears.

23 (3) Sections 2254(a) (2) and (3) of title 18, United
 24 States Code, are amended by striking “, except that” and
 25 all that follows, each time it appears.

1 (c) CONFORMING AMENDMENT.—The chapter analy-
 2 sis for chapter 46 of title 18, United States Code, is
 3 amended by inserting the following at the appropriate
 4 place:

“983. Innocent owners.”

5 **SEC. 203. STAY OF CIVIL FORFEITURE CASE.**

6 (a) IN GENERAL.—Section 981(g) of title 18, United
 7 States Code, is amended to read as follows:

8 “(g)(1) Upon the motion of the United States, the
 9 court shall stay the civil forfeiture proceeding if it deter-
 10 mines that civil discovery or trial could adversely affect
 11 the government’s ability to conduct a related criminal in-
 12 vestigation or the prosecution of a related criminal case.

13 “(2) Upon the motion of a claimant, the court shall
 14 stay the civil forfeiture proceeding with respect to that
 15 claimant if it determines that the claimant is the subject
 16 of a related criminal investigation or case, that the claim-
 17 ant has standing to assert a claim in the civil forfeiture
 18 proceeding, and that continuation of the forfeiture pro-
 19 ceeding may infringe upon the claimant’s right against
 20 self-incrimination in the related investigation or case.

21 “(3) With respect to the impact of civil discovery de-
 22 scribed in paragraphs (1) and (2), the court may deter-
 23 mine that a stay is unnecessary if a protective order limit-
 24 ing discovery would protect the interest of one party with-
 25 out unfairly limiting the ability of the opposing party to

1 pursue the civil case. In no case, however, shall the court
2 impose a protective order as an alternative to a stay if
3 the effect of such protective order would be to allow one
4 party to pursue discovery while the other party was sub-
5 stantially unable to do so.

6 “(4) For the purposes of this subsection, “a related
7 criminal case” and “a related criminal investigation”
8 mean an actual prosecution or investigation in progress
9 at the time the request for the stay is made. In determin-
10 ing whether a criminal case or investigation is “related”
11 to a civil forfeiture proceeding, the court shall consider
12 the degree of similarity between the parties, witnesses,
13 facts and circumstances involved in the two proceedings
14 without requiring an identity with respect to any one or
15 more factors.

16 “(5) Any presentation to the court under this sub-
17 section that involves an on-going criminal investigation
18 shall be made by the Government ex parte and under seal.

19 “(6) Whenever a civil forfeiture proceeding is stayed
20 pursuant to this subsection, the court shall enter any
21 order necessary to preserve the value of the property or
22 to protect the rights of lienholders or other persons with
23 an interest in the property while the stay is in effect.

24 “(7) A determination by the court that the claimant
25 has standing to request a stay pursuant to paragraph (2)

1 shall apply only to the provisions of this subsection and
2 shall not preclude the Government from objecting to the
3 claimant's standing to the time of trial in accordance with
4 Section 987(d) of this title.

5 “(8) An order imposing a stay pursuant to this sub-
6 section shall expire in 180 days unless the court deter-
7 mines, at the end of such time period, that there are com-
8 pelling reasons why the stay should be continued. An order
9 renewing a stay shall be reviewed by the court every 90
10 days unless the parties agree that such review is unneces-
11 sary.”

12 (b) DRUG FORFEITURES.—Section 511(i) of the Con-
13 trolled Substances Act (21 U.S.C. 881(i)) is amended to
14 read as follows:

15 “(i) The provisions of section 981(g) of title 18, Unit-
16 ed States Code, regarding the stay of the civil forfeiture
17 proceeding shall apply to forfeitures under this section.”

18 (c) GUIDELINES.—Within 180 days after the effec-
19 tive date of this section, the Attorney General and the Sec-
20 retary of the Treasury shall jointly promulgate guidelines
21 governing the preservation of the value of property subject
22 to forfeiture in a case that has been stayed pursuant to
23 section 511(i) of the Controlled Substances Act (21 U.S.C.
24 881(i)) or section 981(g) of title 18, United States Code.
25 The guidelines shall take into account the interests of both

1 the Government and the claimant in avoiding the deprecia-
 2 tion, destruction or dissipation of the property pending
 3 conclusion of the forfeiture proceeding.

4 **SEC. 204. APPLICATION OF FORFEITURE PROCEDURES.**

5 (a) IN GENERAL.—Chapter 46 of title 18, United
 6 States Code, is amended by adding the following section:

7 **“§ 988. Application of forfeiture procedures**

8 “(a) CIVIL FORFEITURES.—Whenever a statute in
 9 this title provides for the civil forfeiture of property with-
 10 out specifying the procedures governing a judicial forfeit-
 11 ure action, the provisions of this chapter relating to civil
 12 forfeitures shall apply.

13 “(b) CRIMINAL FORFEITURES.—Whenever a statute
 14 in this title provides for the criminal forfeiture of property
 15 without specifying the procedures governing such forfeit-
 16 ures, the provisions of this chapter relating to criminal for-
 17 feitures shall apply.”

18 (b) CONFORMING AMENDMENT.—The chapter analy-
 19 sis for Chapter 46, of title 18, United States Code, is
 20 amended by adding the following:

“988. Application of Forfeiture Procedures.”

21 **SEC. 205. CIVIL INVESTIGATIVE DEMANDS.**

22 (a) IN GENERAL.—Chapter 46 of title 18, United
 23 States Code, is amended by adding at the end of the fol-
 24 lowing new section:

1 **“§ 985. Civil investigative demands**

2 “(a) For the purpose of conducting an investigation
3 in contemplation of any civil forfeiture proceedings, the
4 Attorney General may—

5 “(1) administer oaths and affirmations;

6 “(2) take evidence; and

7 “(3) by subpoena, summon witnesses and re-
8 quire the production of any books, papers, cor-
9 respondence, memoranda, or other records which the
10 Attorney General deems relevant or material to the
11 inquiry. Such subpoena may require the attendance
12 of witnesses and the production of any such records
13 from any place in the United States at any place in
14 the United States designated by the Attorney Gen-
15 eral.

16 “(b) Except as provided in this section, the proce-
17 dures and limitations that apply to civil investigative de-
18 mands in subsections (g), (h), and (j) of section 1968 of
19 title 18, United States Code, shall apply with respect to
20 civil investigative demands issued under this subsection.
21 Process required by such subsections of section 1968 to
22 be served upon ‘the custodian’ shall be served on the At-
23 torney General. Failure to comply with an order of the
24 court to enforce such demand shall be punishable as civil
25 or criminal contempt.

1 “(c) In the case of a civil investigative demand for
2 which the return date is less than 5 days after the date
3 of service, no person shall be found in contempt for failure
4 to comply by the return date if such person files a petition
5 under subsection (b) not later than 5 days after the date
6 of service.

7 “(d) A civil investigative demand may be issued pur-
8 suant to this section in furtherance of an investigation di-
9 rected toward the forfeiture of an asset at any time up
10 to the filing of a civil forfeiture complaint with respect
11 to that asset, except that no demand relating to a given
12 asset may be served upon any person who files a claim
13 to that asset pursuant to section 1608 of title 19, United
14 States Code, once such claim is filed. Once a given asset
15 is made the subject of a civil forfeiture complaint, all fur-
16 ther discovery regarding the forfeiture of that asset shall
17 proceed in accordance with the Federal Rules of Civil Pro-
18 cedure. Investigation relating to the forfeiture of assets
19 not subject to a claim or to a forfeiture complaint may
20 proceed pursuant to this section at any time.

21 “(e) In this section, ‘Attorney General’ means any at-
22 torney for the Government employed by the Department
23 of Justice as defined by rule 54(c) of the Federal Rules
24 of Criminal Procedure, and shall not include an attorney,

1 agent or other employee of any agency of the Depart-
2 ment.”

3 (b) CONFORMING AMENDMENT.—The chapter analy-
4 sis for chapter 46 of title 18, United States Code is
5 amended by adding the following at the appropriate place:
“985. Civil investigative demands.”

6 (c) OBSTRUCTION OF CIVIL INVESTIGATIVE DE-
7 MAND.—Section 1505 of title 18, United States Code, is
8 amended by inserting “section 985 of this title or” before
9 “the Anti-trust Civil Process Act”.

10 (d) RIGHT TO FINANCIAL PRIVACY ACT AMEND-
11 MENT.—Section 1120(b)(1)(A) of the Right to Financial
12 Privacy Act (12 U.S.C. 3420(b)(1)(A)) is amended by in-
13 serting “or civil investigative demand” after “a grand jury
14 subpoena”.

15 (e) FAIR CREDIT REPORTING ACT AMENDMENT.—
16 Paragraph (1) of section 604 of the Fair Credit Reporting
17 Act (15 U.S.C. 1681b) is amended by striking “or” and
18 inserting “, or a civil investigative demand” after “grand
19 jury”.

20 **SEC. 206. ACCESS TO RECORDS IN BANK SECRECY JURIS-**
21 **DICTIONS**

22 Section 986 of title 18, United States Code, is
23 amended by adding the following new subsection:

1 “ACCESS TO RECORDS LOCATED ABROAD

2 “(d) In any civil forfeiture case, or in any ancillary
3 proceeding in any criminal forfeiture case governed by sec-
4 tion 413(n) of the Controlled Substances Act (21 U.S.C.
5 853(n)), where—

6 “(1) financial records located in a foreign coun-
7 try may be material (A) to any claim or to the abil-
8 ity of the government to respond to such claim, or
9 (B) in a civil forfeiture case, to the Government’s
10 ability to establish the forfeitability of the property;
11 and

12 “(2) it is within the capacity of the claimant to
13 waive his or her rights under such secrecy laws, or
14 to obtain the records him or herself, so that the
15 records can be made available,

16 the refusal of the claimant to provide the records in re-
17 sponse to a discovery request or take the action necessary
18 otherwise to make the records available shall result in the
19 dismissal of the claim with prejudice. This subsection shall
20 not affect the claimant’s rights to refuse production on
21 the basis of any privilege guaranteed by the Constitution
22 or Federal laws of the United States.”

23 **SEC. 207. ACCESS TO OTHER RECORDS.**

24 Section 6103(i)(1) of the Internal Revenue Code (26
25 U.S.C. 6103(i)(1)) is amended—

1 (1) in subparagraph (A)(i) by inserting “or re-
 2 lated civil forfeiture” after “enforcement of a specifi-
 3 cally designated Federal criminal statute”; and

4 (2) in subparagraph (B)(iii) by inserting “or
 5 civil forfeiture investigation or proceeding” after
 6 “Federal criminal investigation or proceeding”.

7 **SEC. 208. DISCLOSURE OF GRAND JURY INFORMATION TO**
 8 **FEDERAL PROSECUTORS.**

9 Section 3322(a) of title 18, United States Code, is
 10 amended—

11 (1) by striking “civil forfeiture under section
 12 981 of title 18, United States Code, of property de-
 13 scribed in section 981(a)(1)(C) of such title” and in-
 14 serting “any civil forfeiture provision of Federal
 15 law”; and

16 (2) by striking “concerning a banking law viola-
 17 tion”.

18 **SEC. 209. CURRENCY FORFEITURES.**

19 Section 511 of the Controlled Substances Act (21
 20 U.S.C. 881) is amended by inserting the following new
 21 subsection:

22 “CURRENCY FORFEITURES

23 “(m) At the trial of an action brought pursuant to
 24 subsection (a)(6), if the Government establishes by a pre-
 25 ponderance of the evidence that the property subject to
 26 forfeiture—

1 “(1) is currency or other monetary instruments
2 that was found in close proximity to a measurable
3 quantity of any controlled substance; or

4 “(2) is currency or other monetary instruments
5 in excess of \$10,000 that was being transported at
6 an airport or other port of entry, on an interstate
7 highway, or on the coastal waters of the United
8 States, and the person in possession of the property
9 disclaims knowledge or ownership of the property, or
10 offers an explanation for his or her possession of the
11 property that is false,

12 there shall be a presumption, governed by rule 301 of the
13 Federal Rules of Evidence, that the property is the pro-
14 ceeds of a violation of the Controlled Substances Act. As
15 provided in rule 301 of the Federal Rules of Evidence,
16 the burden of proof shall at all times be on the United
17 States to establish that the property is subject to forfeit-
18 ure.”

19 **TITLE III—PROPERTY SUBJECT TO** 20 **FORFEITURE**

21 **SEC. 301. FORFEITURE OF PROCEEDS OF FEDERAL OF-** 22 **FENSES.**

23 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
24 18, United States Code, is amended—

1 (1) in subparagraph (C) by striking “of section
2 215” and all that follows up to the period and in-
3 serting “of any offense in this title or a conspiracy
4 to commit such offense”; and

5 (2) by striking subparagraphs (D), (E) and
6 (F).

7 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
8 18, United States Code, is amended—

9 (1) in paragraph (2), by striking “violate—”
10 and subparagraphs (A) and (B) and inserting “vio-
11 late any offense in this title,”; and

12 (2) by striking paragraphs (3), (4), (5) and the
13 first paragraph (6), enacted by Public Law 104–
14 191.

15 **SEC. 302. UNIFORM DEFINITION OF “PROCEEDS”.**

16 (a) CIVIL FORFEITURE.—Section 981(a) of title 18,
17 United States Code, is amended—

18 (1) in paragraph (1), by striking “gross re-
19 cepts” and “gross proceeds” wherever those terms
20 appear and inserting “proceeds”; and

21 (2) by adding the following after paragraph (2):

22 “(3) In this section, ‘proceeds’ means any and
23 all property of any kind obtained, directly or indi-
24 rectly, at any time as the result of the commission
25 of the offense giving rise to forfeiture, and any prop-

erty traceable thereto. ‘Proceeds’ is not limited to the net gain or profit realized from the commission of the offense.”

(b) CRIMINAL FORFEITURE.—Section 982 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “gross receipts” and “gross proceeds” wherever those terms appear and inserting “proceeds”; and

(2) by adding the following paragraph to the end of subsection (b):

“(3) In this section, ‘proceeds’ means any and all property of any kind obtained, directly or indirectly, at any time as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto. Where the offense involves a scheme, a conspiracy, or a pattern of criminal activity, ‘proceeds’ includes any and all property obtained from the entire course of conduct constituting such scheme, conspiracy, or pattern. ‘Proceeds’ is not limited to the net gain or profit realized from the commission of the offense.”

(c) CONTROLLED SUBSTANCES.—(1) Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding the following new subsection:

1 “(k) In this section, ‘proceeds’ means any and all
2 property of any kind obtained, directly or indirectly, at
3 any time as the result of the commission of the offense
4 giving rise to forfeiture, and any property traceable there-
5 to. ‘Proceeds’ is not limited to the net gain or profit real-
6 ized from the commission of the offense.”

7 (2) Section 413 of the Controlled Substances Act (21
8 U.S.C. 853) is amended by adding the following new sub-
9 section:

10 “DEFINITION OF PROCEEDS

11 “(q) In this section, ‘proceeds’ means any and all
12 property of any kind obtained at any time, directly or indi-
13 rectly, as the result of the commission of the offense giving
14 rise to forfeiture, and any property traceable thereto.
15 Where the offense involves a scheme, a conspiracy, or a
16 pattern of criminal activity, ‘proceeds’ includes any and
17 all property obtained from the entire course of conduct
18 constituting such scheme, conspiracy, or pattern. ‘Pro-
19 ceeds’ is not limited to the net gain or profit realized from
20 the commission of the offense.”

21 (d) RICO.—Subsection 1963(a) of title 18, United
22 States Code, is amended by adding the following at the
23 end: “In this section, ‘proceeds’ means any and all prop-
24 erty obtained from the entire pattern of racketeering activ-
25 ity or unlawful debt collection and is not limited to net
26 profits.”

1 **SEC. 303. FORFEITURE OF FIREARMS USED IN CRIMES OF**
2 **VIOLENCE AND FELONIES.**

3 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
4 18, United States Code, is amended by inserting after sub-
5 paragraph (C) the following:

6 “(D) Any firearm (as defined in section
7 921(a)(3) of this title) used or intended to be
8 used to commit or to facilitate the commission
9 of any crime of violence (as defined in section
10 16 of this title) or any felony under Federal
11 law.”

12 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
13 18, United States Code, is amended by inserting after sub-
14 paragraph (2) the following:

15 “(3) The court, in imposing a sentence on a
16 person convicted of any crime of violence (as defined
17 in section 16 of this title) or any felony under Fed-
18 eral law, shall order that the person forfeit to the
19 United States any firearm (as defined in section
20 921(a)(3) of this title) used or intended to be used
21 to commit or to facilitate the commission of the of-
22 fense.”

23 (c) DISPOSAL OF FORFEITED PROPERTY.—Section
24 981(c) of title 18, United States Code, is amended by add-
25 ing at the end the following sentence: “Any firearm for-
26 feited pursuant to subsection (a)(1)(D) or section

1 982(a)(3) of this title shall be disposed of by the seizing
2 agency in accordance with law.”

3 (d) AUTHORITY TO FORFEIT PROPERTY UNDER
4 SECTION 924(d).—Section 924(d) of title 18, United
5 States Code, is amended by adding the following new
6 paragraph:

7 “(4) Whenever any firearm is subject to forfeit-
8 ure under this section because it was involved in or
9 used in a violation of subsection (c), the Secretary
10 of the Treasury shall have the authority to seize and
11 forfeit, in accordance with the procedures of the ap-
12 plicable forfeiture statute, any property otherwise
13 forfeitable under the laws of the United States that
14 was involved in or derived from the crime of violence
15 or drug trafficking crime described in subsection (c)
16 in which the forfeited firearm was used or carried.”

17 (e) 120-DAY RULE FOR ADMINISTRATIVE FORFEIT-
18 URE.—Section 924(d)(1) of title 18, United States Code,
19 is amended by adding the following after the last sentence:
20 “If the Government institutes an administrative forfeiture
21 action within the 120-day period, and a claim is then filed
22 that requires that a judicial forfeiture action be filed in
23 Federal court, the Government must file the judicial ac-
24 tion within 120 days of the filing of the claim. The time
25 during which any related criminal indictment or informa-

tion is pending shall not be counted in calculating either of the 120-day periods referred to in this subsection.”

SEC. 304. FORFEITURE OF PROCEEDS TRACEABLE TO FACILITATING PROPERTY IN DRUG CASES.

(a) CONVEYANCES.—Section 511(a)(4) of the Controlled Substances Act (21 U.S.C. 881(a)(4)) is amended—

(1) by inserting “, and any property traceable to such conveyances” after “property described in paragraph (1), (2), or (9)”;

(2) in subparagraph (A) by inserting “, and no property traceable to such conveyance,” before “shall be forfeited”; and

(3) in subparagraphs (B) and (C) by inserting “and no property traceable to such conveyance” before “shall be forfeited”.

(b) REAL PROPERTY.—Section 511(a)(7) of the Controlled Substances Act (21 U.S.C. 881(a)(7)) is amended by inserting “, and any property traceable to such property” after “one year’s imprisonment”.

(c) NEGOTIABLE INSTRUMENTS AND SECURITIES.—Section 511(a)(6) of the Controlled Substances Act (21 U.S.C. 881(a)(6)) is amended by inserting “, and any property traceable to such property” after “this subchapter” the second time it appears.

1 **SEC. 305. FORFEITURE FOR ALIEN SMUGGLING.**

2 (a) CRIMINAL FORFEITURE AUTHORITY.—Section
3 982(a) of title 18, United States Code, is amended—

4 (1) by redesignating the second paragraph (6)
5 as paragraph (7);

6 (2) by inserting “sections 274(a), 274A(a)(1)
7 or 274A(a)(2) of the Immigration and Nationality
8 Act of 1952 (8 U.S.C. 1324(a), 1324A(a)(1) and
9 1324A(a)(2)),” before “section 1425” the first time
10 it appears;

11 (3) in subparagraph (A)(i), by striking “sub-
12 section (a)” and inserting “the offense”; and

13 (4) in subparagraph (A)(ii) (I) and (II), by
14 striking “subsection (a)” through “of this title” and
15 inserting “the offense”.

16 (b) CIVIL FORFEITURE.—Section 274(b) of the Im-
17 migration and Nationality Act of 1952 (8 U.S.C. 1324(b))
18 is amended—

19 (1) by amending paragraphs (1) and (2) to
20 read as follows:

21 “(b) SEIZURE AND FORFEITURE.—(1) The following
22 property shall be subject to seizure and forfeiture:

23 “(A) any conveyance, including any vessel, vehi-
24 cle, or aircraft, which has been or is being used in
25 the commission of a violation of subsection (a); and

1 “(B) any property, real or personal, (i) that
2 constitutes, or is derived from or is traceable to the
3 proceeds obtained directly or indirectly from the
4 commission of a violation of subsection (a), or (ii)
5 that is used to facilitate, or is intended to be used
6 to facilitate, the commission of a violation of sub-
7 paragraph (a)(1)(A).

8 “(2) Any property subject to forfeiture to the United
9 States under this section may be seized by the Attorney
10 General in the manner set forth in section 981(b) of title
11 18, United States Code.”; and

12 (2) in paragraphs (4) and (5) by striking “a
13 conveyance” and “conveyance” each place the
14 phrase or word appears and inserting “property”.

15 **SEC. 306. FORFEITURE OF PROCEEDS OF CERTAIN FOR-**
16 **EIGN CRIMES.**

17 Section 981(a)(1)(B) of title 18, United States Code,
18 is amended by—

19 (1) inserting “(i)” after “against a foreign na-
20 tion involving”; and

21 (2) inserting “(ii) any other conduct described
22 in section 1956(c)(7)(B),” after “(as such term is
23 defined for purposes of the Controlled Substances
24 Act)”.

1 **SEC. 307. FORFEITURE OF PROPERTY USED TO FACILITATE**
 2 **FOREIGN DRUG CRIMES.**

3 Section 981(a)(1)(B) of title 18, United States Code,
 4 is amended by inserting “, or any property used to facili-
 5 tate an offense described in subparagraph (i)” at the end
 6 before the period.

7 **SEC. 308. FORFEITURE FOR VIOLATIONS OF SECTION 6050I**
 8 **AND 1960.**

9 (a) Sections 981(a)(1)(A) and 982(a)(1) of title 18,
 10 United States Code, are amended by inserting “, or of sec-
 11 tion 6050I of the Internal Revenue Code of 1986 (26
 12 U.S.C. 6050I)” after “of title 31”.

13 (b) Section 981(a)(1)(A) of title 18, United States
 14 Code, is amended by striking “or 1957” and inserting “,
 15 1957 or 1960”.

16 **SEC. 309. CRIMINAL FORFEITURE FOR MONEY LAUNDER-**
 17 **ING CONSPIRACIES.**

18 Section 982(a)(1) of title 18, United States Code, is
 19 amended by inserting “, or a conspiracy to commit any
 20 such offense” after “of this title”.

21 **SEC. 310. ARCHAEOLOGICAL RESOURCES PROTECTION**
 22 **ACT.**

23 Section 8(b) of the Archaeological Resources Protec-
 24 tion Act of 1979 (16 U.S.C. 470gg(b)) is amended by—

25 (1) inserting “all proceeds derived directly or
 26 indirectly from such violation or any property trace-

1 able thereto,” before “and all vehicles” in the un-
 2 numbered paragraph;

3 (2) inserting “proceeds,” before “vehicles” in
 4 paragraph (3); and

5 (3) inserting the following at the end of the
 6 subsection: “If a forfeiture count is included within
 7 an indictment in accordance with the Federal Rules
 8 of Criminal Procedure, and the defendant is con-
 9 victed of the offense giving rise to the forfeiture, the
 10 forfeiture may be ordered as part of the criminal
 11 sentence in accordance with the procedures for
 12 criminal forfeitures in chapter 46 of title 18, United
 13 States Code. Otherwise, the forfeiture shall be civil
 14 in nature in accordance with the procedures for civil
 15 forfeiture in said chapter 46 of title 18.”

16 **SEC. 311. FORFEITURE OF INSTRUMENTALITIES OF TER-**
 17 **RORISM, TELEMARKETING FRAUD, AND**
 18 **OTHER OFFENSES.**

19 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
 20 18, United States Code, is amended by adding the follow-
 21 ing subparagraphs:

22 “(E)(i) Any computer, photostatic reproduction
 23 machine, electronic communications device or other
 24 material, article, apparatus, device or thing made,
 25 possessed, fitted, used or intended to be used on a

1 continuing basis to commit a violation of sections
2 513, 514, 1028 through 1032, and 1341, 1343 and
3 1344 of this title, or a conspiracy to commit such of-
4 fense, and any property traceable to such property.

5 “(ii) Any conveyance used on two or more occa-
6 sions to transport the instrumentalities used in the
7 commission of a violation of sections 1028 and 1029
8 of this title, or a conspiracy to commit such offense,
9 and any property traceable to such conveyance.

10 “(F) Any conveyance, chemicals, laboratory
11 equipment, or other material, article, apparatus, de-
12 vice or thing made, possessed, fitted, used or in-
13 tended to be used to commit—

14 “(i) an offense punishable under Chapter
15 113B of this title (relating to terrorism);

16 “(ii) a violation of the National Firearms
17 Act (26 U.S.C. chapter 53);

18 “(iii) a violation of any of the following
19 sections of the federal explosives laws: sub-
20 sections (a) (1) and (3), (b) through (d), and
21 (h)(1) of section 842, and subsections (d)
22 through (m) of section 844; or

23 “(iv) any other offense enumerated in sec-
24 tion 2339A(a) of this title;

1 or a conspiracy to commit any such offense, and any
2 property traceable to such property.”

3 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
4 18, United States Code, is amended by inserting the fol-
5 lowing new paragraph:

6 “(4)(A) The court, in imposing a sentence on a
7 person convicted of a violation of sections 513, 514,
8 1028 through 1032, and 1341, 1343 and 1344 of
9 this title, or a conspiracy to commit such offense,
10 shall order the person to forfeit to the United States
11 any computer, photostatic reproduction machine,
12 electronic communications device or other material,
13 article, apparatus, device or thing made, possessed,
14 fitted, used or intended to be used to commit such
15 offense, and any property traceable to such property.

16 “(B) The court, in imposing a sentence on a
17 person convicted of a violation of section 1028 or
18 1029 of this title, or a conspiracy to commit such of-
19 fense, shall order the person to forfeit to the United
20 States any conveyance used on two or more occa-
21 sions to transport the instrumentalities used to com-
22 mit such offense, and any property traceable to such
23 conveyance.

24 “(5) The court, in imposing a sentence on a
25 person convicted of—

1 “(A) an offense punishable under chapter
2 113B of this title (relating to terrorism);

3 “(B) a violation of the National Firearms
4 Act (26 U.S.C. chapter 53);

5 “(C) a violation of any of the following sec-
6 tions of the Federal explosives laws: subsections
7 (a) (1) and (3), (b) through (d), and (h)(1) of
8 section 842, and subsections (d) through (m) of
9 section 844; or

10 “(D) any other offense enumerated in sec-
11 tion 2339A(a) of this title;

12 or a conspiracy to commit any such offense, shall
13 order the person to forfeit to the United States any
14 conveyance, chemicals, laboratory equipment, or
15 other material, article, apparatus, device or thing
16 made, possessed, fitted, used or intended to be used
17 to commit such offense, and any property traceable
18 to such property.”

19 **SEC. 312. FORFEITURE OF VEHICLES USED FOR GUN RUN-**
20 **NING.**

21 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
22 18, United States Code, is amended by adding the follow-
23 ing subparagraph:

24 “(G)(i) Any conveyance used or intended to be
25 used to commit a gun running offense, or conspiracy

1 to commit such offense, and any property traceable
2 to such property.

3 (ii) For the purposes of this section, a gun run-
4 ning offense is a violation of any of the following
5 sections of this title involving five or more firearms:
6 section 922(i) (transporting stolen firearms); section
7 924(g) (travel with a firearm in furtherance of rack-
8 eteering); section 924(k) (stealing a firearm); and
9 section 924(m) (interstate travel to promote fire-
10 arms trafficking).

11 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
12 18, United States Code, is amended by inserting the fol-
13 lowing new paragraph:

14 “(6) The court, in imposing a sentence on a
15 person convicted of a gun running offense, as de-
16 fined in section 981(a)(1)(G), or a conspiracy to
17 commit such offense, shall order the person to forfeit
18 to the United States any conveyance used or in-
19 tended to be used to commit such offense, and any
20 property traceable to such conveyance.”

21 **SEC. 313. FORFEITURE OF CRIMINAL PROCEEDS TRANS-**
22 **PORTED IN INTERSTATE COMMERCE.**

23 Section 1952 of title 18, United States Code, is
24 amended by adding the following subsection:

1 “(d)(1) Any proceeds distributed or intended to be
 2 distributed in violation of subsection (a)(1) or a conspiracy
 3 to commit such violation, or any property traceable to such
 4 property, is subject to forfeiture to the United States in
 5 accordance with the procedures set forth in section 981
 6 of this title.

7 “(2) The court, in imposing sentence on a person con-
 8 victed of an offense in violation of subsection (a)(1) or
 9 a conspiracy to commit such offense, shall order that the
 10 person forfeit to the United States any proceeds distrib-
 11 uted or intended to be distributed in the commission of
 12 such offense, or any property traceable to such property,
 13 in accordance with the procedures set forth in section 982
 14 of this title.”

15 **SEC. 314. FORFEITURES OF PROCEEDS OF FEDERAL FOOD,**
 16 **DRUG, AND COSMETIC ACT VIOLATIONS.**

17 Chapter 9 of title 21, United States Code, is amended
 18 by adding the following two new sections:

19 **“§ 311. Civil forfeiture of proceeds of Federal Food,**
 20 **Drug, and Cosmetic Act Violations**

21 “(a) Any property, real or personal, that constitutes,
 22 or is derived from or is traceable to the proceeds obtained
 23 directly or indirectly from a criminal violation of, or a con-
 24 spiracy to commit a criminal violation of, a provision of
 25 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

1 301–395) shall be subject to judicial forfeiture to the
2 United States.

3 “(b) The provisions of chapter 46 of title 18, United
4 States Code, relating to civil forfeitures shall extend to
5 a seizure or forfeiture under this section, insofar as appli-
6 cable and not inconsistent with the provisions hereof, ex-
7 cept that such duties as are imposed upon the Secretary
8 of the Treasury under chapter 46 shall be performed with
9 respect to seizures and forfeitures under this section by
10 such officers, agents, or other persons as may be author-
11 ized or designated for that purpose by the Secretary of
12 Health and Human Services.

13 **“§ 312. Criminal forfeiture of proceeds of Federal**
14 **Food, Drug, and Cosmetic Act violations**

15 “(a) Any person convicted of a violation of, or a con-
16 spiracy to violate, a provision of the Federal Food, Drug,
17 and Cosmetic Act (21 U.S.C. 301–395) shall forfeit to the
18 United States, irrespective of any provision of State law,
19 any property constituting, or derived from, any proceeds
20 the person obtained, directly or indirectly, as the result
21 of such violation. The court, in imposing sentence on such
22 person, shall order that the person forfeit to the United
23 States all property described in this subsection.

24 “(b) Property subject to forfeiture under this section,
25 any seizure and disposition thereof, and any administra-

1 tive or judicial proceeding in relation thereto, shall be gov-
 2 erned by the provisions of section 413 of the Comprehen-
 3 sive Drug Abuse Prevention and Control Act of 1970 (21
 4 U.S.C. 853), except for subsection 413(d) which shall not
 5 apply to forfeitures under this section.”

6 **SEC. 315. FORFEITURE FOR FOOD STAMP FRAUD.**

7 Section 15 of the Food Stamp Act of 1977 (7 U.S.C.
 8 2024) is amended by adding at the end the following new
 9 subsection:

10 “(i) CIVIL FORFEITURE.—

11 “(1) Any property, real or personal—

12 “(A) used in a transaction or attempted
 13 transaction, to commit or to facilitate the com-
 14 mission of a violation (other than a mis-
 15 demeanor) of subsection (b) or (c), or

16 “(B) constituting, derived from, or trace-
 17 able to proceeds of a violation of subsection (b)
 18 or (c), shall be subject to forfeiture to the Unit-
 19 ed States.

20 “(2) The provisions of chapter 46 of title 18,
 21 relating to civil forfeitures shall extend to a seizure
 22 or forfeiture under this subsection, insofar as appli-
 23 cable and not inconsistent with the provisions of this
 24 subsection, except that such duties as are imposed
 25 upon the Secretary of the Treasury under chapter

1 46 shall be performed with respect to seizures and
 2 forfeitures under this section by such officers,
 3 agents, and other persons as may be designated for
 4 that purpose by the Secretary of Agriculture.”

5 **SEC. 316. FORFEITURE FOR ODOMETER TAMPERING OF-**
 6 **FENSES.**

7 (a) **CRIMINAL FORFEITURE.**—Section 982(a)(5) of
 8 title 18, United States Code, is amended—

9 (1) by striking “or” at the end of subparagraph
 10 (D);

11 (2) by inserting “or” after the semicolon at the
 12 end of sub-paragraph (E);

13 (3) by inserting the following after sub-para-
 14 graph (E), as amended:

15 “(F) section 32703 of title 49, United
 16 States Code (motor vehicle odometer tamper-
 17 ing);”; and

18 (4) by adding the following after the last pe-
 19 riod: “If the conviction was for a violation described
 20 in subparagraph (F), the court shall also order the
 21 forfeiture of any vehicles or other property involved
 22 in the commission of the offense.”

23 (b) **CIVIL FORFEITURE.**—Section 981(a)(1)(F) of
 24 title 18, United States Code, is amended—

25 (1) by striking “or” at the end of clause (iv);

1 (2) by striking the period at the end of clause
2 (v) and inserting “; or”;

3 (3) by inserting the following after clause (v),
4 as amended:

5 “(vi) section 32703 of title 49, United
6 States Code (motor vehicle odometer tamper-
7 ing).”; and

8 (4) by adding the following after the last pe-
9 riod: “In the case of a violation described in clause
10 (vi), any vehicles or other property involved in the
11 commission of the offense shall also be subject to
12 forfeiture.”

13 **TITLE IV—MISCELLANEOUS FORFEITURE** 14 **AMENDMENTS**

15 **SEC. 401. USE OF FORFEITED FUNDS TO PAY RESTITUTION** 16 **TO CRIME VICTIMS AND REGULATORY AGEN-** 17 **CIES.**

18 Section 981 of title 18, United States Code, is
19 amended—

20 (1) by amending subsection (e)(6) to read as
21 follows:

22 “(6) as restoration to any victim of the offense
23 giving rise to the forfeiture, including, in the case of
24 a money laundering offense, any offense constituting
25 the underlying specified unlawful activity; or”;

1 (2) in subsections (e) (3), (4) and (5), by strik-
 2 ing “in the case of property referred to in subsection
 3 (a)(1)(C)” and inserting “in the case of property
 4 forfeited in connection with an offense resulting in
 5 a pecuniary loss to a financial institution or regu-
 6 latory agency”; and

7 (3) in subsection (e)(7), by striking “in the case
 8 of property referred to in subsection (a)(1)(D)” and
 9 inserting “in the case of property forfeited in con-
 10 nection with an offense relating to the sale of assets
 11 acquired or held by any Federal financial institution
 12 or regulatory agency, or person appointed by such
 13 agency, as receiver, conservator or liquidating agent
 14 for a financial institution”.

15 **SEC. 402. ENFORCEMENT OF FOREIGN FORFEITURE JUDG-**
 16 **MENT.**

17 (a) IN GENERAL.—Chapter 163 of title 28, United
 18 States Code, is amended by inserting the following new
 19 section:

20 **“§ 2466. Enforcement of foreign forfeiture judgment**

21 “(a) DEFINITIONS.—As used in this section—

22 “(1) ‘Foreign nation’ shall mean a country that
 23 has become a party to the United Nations Conven-
 24 tion Against Illicit Traffic in Narcotic Drugs and
 25 Psychotropic Substances (hereafter ‘the United Na-

1 tions Convention’) or a foreign jurisdiction with
2 which the United States has a treaty or other formal
3 international agreement in effect providing for mu-
4 tual forfeiture assistance.

5 “(2) ‘Value based confiscation judgment’ shall
6 mean a final order of a foreign nation compelling a
7 defendant, as a consequence of his or her criminal
8 conviction for an offense described in article 3, para-
9 graph 1, of the United Nations Convention, to pay
10 a sum of money representing the proceeds of such
11 offense, or property the value of which corresponds
12 to such proceeds.

13 “(b) REVIEW BY ATTORNEY GENERAL.—A foreign
14 nation seeking to have its value based confiscation judg-
15 ment registered and enforced by a United States district
16 court under this section must first submit a request to
17 the Attorney General or his or her designee. Such request
18 shall include:

19 “(1) a summary of the facts of the case and a
20 description of the criminal proceeding which resulted
21 in the value-based confiscation judgment;

22 “(2) certified copies of the judgment of convic-
23 tion and value-based confiscation judgment;

24 “(3) an affidavit or sworn declaration establish-
25 ing that the defendant received notice of the pro-

1 ceedings in sufficient time to enable him or her to
2 defend against the charges that the value-based
3 confiscation judgment rendered is in force and is not
4 subject to appeal;

5 “(4) an affidavit or sworn declaration that all
6 reasonable efforts have been undertaken to enforce
7 the value-based confiscation judgment against the
8 defendant’s property, if any, in the foreign country;
9 and

10 “(5) such additional information and evidence
11 as may be required by the Attorney General or his
12 or her designee.

13 The Attorney General or his or her designee, in consulta-
14 tion with the Secretary of State or his or her designee,
15 shall determine whether to certify the request, and such
16 decision shall be final and not subject to either judicial
17 review or review under the Administrative Procedures Act,
18 5 U.S.C. 551 et seq.

19 “(c) JURISDICTION AND VENUE.—Where the Attor-
20 ney General or his or her designee certifies a request
21 under subsection (b), the foreign nation may file a civil
22 proceeding in United States district court seeking to en-
23 force the foreign value based confiscation judgment as if
24 the judgment had been entered by a court in the United
25 States. In such a proceeding, the foreign nation shall be

1 the plaintiff and the person against whom the value-based
2 confiscation judgment was entered shall be the defendant.
3 Venue shall lie in the district court for the District of Co-
4 lumbia or in any other district in which the defendant or
5 the property that may be the basis for satisfaction of a
6 judgment under this section may be found. The district
7 court shall have personal jurisdiction over a defendant re-
8 siding outside of the United States if the defendant is
9 served with process in accordance with rule 4 of the Fed-
10 eral Rules of Civil Procedure.

11 “(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

12 (1) Except as provided in paragraph (2), the district court
13 shall enter such orders as may be necessary to enforce
14 the value-based confiscation judgment on behalf of the for-
15 eign nation where it finds that all of the following require-
16 ments have been met:

17 “(A) the value-based confiscation judgment
18 was rendered under a system which provides
19 impartial tribunals or procedures compatible
20 with the requirements of due process of law;

21 “(B) the foreign court had personal juris-
22 diction over the defendant;

23 “(C) the foreign court had jurisdiction over
24 the subject matter;

1 “(D) the defendant in the proceedings in
2 the foreign court received notice of the proceed-
3 ings in sufficient time to enable him or her to
4 defend; and

5 “(E) the judgment was not obtained by
6 fraud.

7 Process to enforce a judgment under this section will be
8 in accordance with rule 69(a) of the Federal Rules of Civil
9 Procedure.

10 “(e) FINALITY OF FOREIGN FINDINGS.—Upon a
11 finding by the district court that the conditions set forth
12 in subsection (d) have been satisfied, the court shall be
13 bound by the findings of facts insofar as they are stated
14 in the foreign judgment of conviction and value-based
15 confiscation judgment.

16 “(f) CURRENCY CONVERSION.—Insofar as a value
17 based confiscation judgment requires the payment of a
18 sum of money, the rate of exchange in effect at time when
19 the suit to enforce is filed by the foreign nation shall be
20 used in calculating the amount stated in the judgment
21 submitted for registration.”

22 (b) CONFORMING AMENDMENT.—The chapter analy-
23 sis for chapter 163, title 28, United States Code, is
24 amended by inserting the following at the end:

“2466. Enforcement of foreign forfeiture judgment”

1 **SEC. 403. MINOR AND TECHNICAL AMENDMENTS RELATING**
2 **TO 1992 FORFEITURE AMENDMENTS.**

3 (a) CRIMINAL FORFEITURE.—Section 982(b) of title
4 18, United States Code, is amended in subsection (b)(2),
5 by striking “The substitution” and inserting “With re-
6 spect to a forfeiture under subsection (a)(1), the substi-
7 tution”.

8 (b) FUNGIBLE PROPERTY.—Section 984 of title 18,
9 United States Code, is amended—

10 (1) by striking subsection (a) and redesignating
11 the remaining subsections as (a), (b), and (c), re-
12 spectively;

13 (2) by amending subsection (b) (as redesign-
14 nated) to read as follows:

15 “(b) The provisions of this section may be invoked
16 only if the action for forfeiture was commenced by a sei-
17 zure or an arrest in rem within two years of the offense
18 that is the basis for the forfeiture.”;

19 (3) by amending subsection (c)(1) (as redesign-
20 nated) to read as follows:

21 “(c)(1) Subsection (a) shall not apply to an action
22 against funds held by a financial institution in an inter-
23 bank account unless the account holder knowingly engaged
24 in the offense that is the basis for the forfeiture.”;

25 (4) by adding the following new paragraph to
26 subsection (c) (as redesignated):

1 “(3) As used in this subsection, a ‘financial in-
2 stitution’ includes a foreign bank, as defined in
3 paragraph 7 of section 1(b) of the International
4 Banking Act of 1978.”; and

5 (5) by adding the following new subsection:

6 “(d) Nothing in this section is intended to limit the
7 ability of the Government to forfeit property under any
8 statute where the property involved in the offense giving
9 rise to the forfeiture or property traceable thereto is avail-
10 able for forfeiture.”

11 (c) SUBPOENAS FOR BANK RECORDS.—Section
12 986(a) of title 18, United States Code, is amended by—

13 (1) striking “section 1956, 1957 or 1960 of
14 this title, section 5322 or 5324 of title 31, United
15 States Code” and inserting “section 981 of this
16 title”; and

17 (2) striking the last sentence.

18 (d) CIVIL MONEY LAUNDERING ENFORCEMENT.—
19 Section 1956(b) of title 18, United States Code, is amend-
20 ed—

21 (1) by redesignating the present matter as
22 paragraph (1), and the present paragraphs (1) and

23 (2) as subparagraphs (A) and (B), respectively; and

24 (2) by inserting the following new paragraphs:

1 “(2) For purposes of adjudicating an action
2 filed or enforcing a penalty ordered under this sec-
3 tion, the district courts shall have jurisdiction over
4 any foreign person, including any financial institu-
5 tion registered in a foreign country, that commits an
6 offense under subsection (a) involving a financial
7 transaction that occurs in whole or in part in the
8 United States; *Provided*, That service of process
9 upon such foreign person is made under the Federal
10 Rules of Civil Procedure or the laws of the country
11 where the foreign person is found.

12 “(3) The court may issue a pretrial restraining
13 order or take any other action necessary to ensure
14 that any bank account or other property held by the
15 defendant in the United States is available to satisfy
16 a judgment under this section.”

17 (e) DEFINITION OF FINANCIAL INSTITUTION.—Sec-
18 tion 5312(a)(2) of title 31, United States Code, is amend-
19 ed by redesignating subparagraphs (Y) and (Z) as (Z) and
20 (AA), respectively, and by inserting the following new sub-
21 paragraph after subparagraph (X):

22 “(Y) a bail bondsman;”.

23 (f) Section 981(d) of title 18, United States Code,
24 is amended by striking “sale of this section” and inserting
25 “sale of such property.”

1 **SEC. 404. CIVIL FORFEITURE OF COINS AND CURRENCY IN**
2 **CONFISCATED GAMBLING DEVICES.**

3 Section 7 of Public Law 81–906 (15 U.S.C. 1177)
4 is amended—

5 (1) by inserting “Any coin or currency con-
6 tained in any gambling device at the time of its sei-
7 zure pursuant to the preceding sentence shall also be
8 seized and forfeited to the United States.” after the
9 first sentence; and

10 (2) in the last sentence, by inserting “, coins,
11 or currency” after “gambling devices”.

12 **SEC. 405. DRUG PARAPHERNALIA TECHNICAL AMEND-**
13 **MENTS.**

14 (a) Section 511(a)(10) of the Controlled Substances
15 Act (21 U.S.C. 881(a)(10)) is amended by striking “857
16 of this title” and inserting “422 of this subchapter (21
17 U.S.C. 863)”.

18 (b) Section 422 of the Controlled Substances Act (21
19 U.S.C. 863) is amended:

20 (1) by deleting subsection (c); and

21 (2) by redesignating subsections (d), (e), and
22 (f) to be subsections (c), (d), and (e).

1 **SEC. 406. AUTHORIZATION TO SHARE FORFEITED PROP-**
2 **ERTY WITH COOPERATING FOREIGN GOV-**
3 **ERNMENTS.**

4 (a) IN GENERAL.—Section 981(i)(1) of title 18,
5 United States Code, is amended by striking “this chapter”
6 and inserting “any provision of Federal law”.

7 (b) CONFORMING AMENDMENT.—Section 511(e)(1)
8 of the Controlled Substances Act is amended by striking
9 “; or” and all of subparagraph (E) and inserting a period.

10 **SEC. 407. FORFEITURE OF COUNTERFEIT PARAPHERNALIA.**

11 Section 492 of title 18, United States Code, is
12 amended—

13 (1) by striking the third and fourth undesig-
14 nated paragraphs;

15 (2) by designating the remaining paragraphs as
16 subsections (a) and (b);

17 (3) by adding the following new subsections:

18 “(c) For the purposes of this section, the provisions
19 of the customs laws relating to the seizure, summary and
20 judicial forfeiture, condemnation of property for violation
21 of the customs laws, the disposition of such property or
22 the proceeds from the sale of such property, the remission
23 or mitigation of such forfeitures, and the compromise of
24 claims (19 U.S.C. 1602 et seq.), insofar as they are appli-
25 cable and not inconsistent with the provisions of this sec-
26 tion, shall apply to seizures and forfeitures incurred, or

1 alleged to have been incurred, under this section, except
2 that the duties as are imposed upon the customs officer
3 or any other person with respect to the seizure and forfeit-
4 ure of property under the customs laws shall be performed
5 with respect to seizures and forfeitures of property under
6 this section by such officers, agents, or other persons as
7 may be authorized or designated for that purpose by the
8 Secretary of the Treasury.

9 “(d) All seizures and civil judicial forfeitures pursu-
10 ant to subsection (a) shall be governed by the procedures
11 set forth in chapter 46 of this title pertaining to civil for-
12 feitures. The Attorney General shall have sole responsibil-
13 ity for disposing of petitions for remission or mitigation
14 with respect to property involved in a judicial forfeiture
15 proceeding.

16 “(e) A court in sentencing a person for a violation
17 of this chapter or of sections 331–33, 335, 336, 642, or
18 1720 of this title, shall order the person to forfeit the
19 property described in subsection (a) in accordance with the
20 procedures set forth in section 982 of this title.”; and

21 (4) in subsection (b), as so designated by this
22 section, by striking “fined not more than \$100” and
23 inserting “fined under this title”.

1 **SEC. 408. CLOSING OF LOOPHOLE TO DEFEAT CRIMINAL**
2 **FORFEITURE THROUGH BANKRUPTCY.**

3 Section 413(a) of the Controlled Substances Act (21
4 U.S.C. 853(a)) is amended by inserting “, or of any bank-
5 ruptcy proceeding instituted after or in contemplation of
6 a prosecution of such violation” after “shall forfeit to the
7 United States, irrespective of any provision of State law”.

8 **SEC. 409. STATUTE OF LIMITATIONS FOR CIVIL FORFEIT-**
9 **URE ACTIONS.**

10 (a) IN GENERAL.—Section 621 of the Tariff Act of
11 1930 (19 U.S.C. 1621) is amended by inserting “, or in
12 the case of forfeiture, within five years after the time when
13 the involvement of the property in the alleged offense was
14 discovered” after “within five years after the time when
15 the alleged offense was discovered”.

16 (b) FIRREA CASES.—Section 981(a) of title 18,
17 United States Code, is amended by adding at the end a
18 new paragraph, as follows:

19 “(3) An action seeking the forfeiture of prop-
20 erty described in subparagraph (a)(1)(C) arising out
21 of an offense affecting a financial institution or the
22 conservator or receiver of a financial institution may
23 be commenced not later than ten years after the dis-
24 covery of the involvement of the property in the act
25 giving rise to the forfeiture. This paragraph shall
26 apply to any forfeiture action not barred by the expi-

1 ration of the limitation period provided by section
 2 621 of the Tariff Act of 1930 (19 U.S.C. 1621) at
 3 the time this paragraph became effective.”

4 **SEC. 410. ASSETS FORFEITURE FUND AND PROPERTY DIS-**
 5 **POSITION.**

6 (a) TECHNICAL AMENDMENTS.—Section 524 of title
 7 28, United States Code, is amended—

8 (1) in paragraph (c)(1) by striking “and” at
 9 the end of subparagraph (H), by striking the second
 10 subparagraph (I) that begins with “after all reim-
 11 bursements” and ends with “correctional institu-
 12 tions”, and by inserting “and” following the semi-
 13 colon at the end of the remaining subparagraph (I);

14 (2) in paragraph (c)(3), by deleting “(F)” and
 15 inserting “(G)”;

16 (3) in subparagraph (c)(4)(C) by deleting
 17 “(g)(4)(A)(ii)”;

18 (4) in subparagraph (c)(8)(A), by striking
 19 “(A)(iv), (B), (F), (G), and (H)” and inserting
 20 “(A)(ii), (B), (F), and (G)”;

21 (5) by repealing paragraph (c)(6), and renum-
 22 bering paragraphs (c)(7) through (c)(11) as para-
 23 graphs (c)(6) through (c)(10).

1 (b) DISPOSAL OF FORFEITED PROPERTY.—Section
2 524(c)(8) of title 28, United States Code, as redesignated
3 by this section, is amended to read as follows:

4 “(8) Following the completion of procedures for
5 the forfeiture of property pursuant to any law en-
6 forced or administered by the Department, the At-
7 torney General, under such terms and conditions as
8 the Attorney General shall specify, is authorized to:

9 “(A) destroy the property if it is unsuit-
10 able for public use or sale, or uneconomical to
11 market;

12 “(B) transfer the property to any
13 lienholder (including taxing authorities) or
14 mortgagee in lieu of the compromise and pay-
15 ment of a valid lien or mortgage against the
16 property;

17 “(C) disburse all or part of an amount for-
18 feited as restoration to any victim of the offense
19 giving rise to the forfeiture, or any other of-
20 fense that was part of the same scheme, con-
21 spiracy, or pattern of criminal activity, includ-
22 ing, in the case of a money laundering offense,
23 any offense constituting the underlying speci-
24 fied unlawful activity, in accordance with the
25 relevant forfeiture statute;

1 “(D) dispose of the property by public sale
2 or any other commercially feasible means; or re-
3 quest the General Services Administration to
4 take custody of the property and to dispose of
5 it in accordance with law;

6 “(E) place the property into official use or
7 transfer the property to any other federal agen-
8 cy for official use;

9 “(F) transfer the property to foreign gov-
10 ernments pursuant to section 981(i) of title 18,
11 United States Code;

12 “(G) transfer the property, or the net pro-
13 ceeds of sale of the property, to State or local
14 law enforcement agencies that participated di-
15 rectly in any of the acts that led to the seizure
16 or forfeiture of the property, in accordance with
17 section 981(e) of title 18, United States Code;
18 section 511(e)(3) of the Controlled Substances
19 Act (21 U.S.C. 881(e)(3)); or any other provi-
20 sion of law pertaining to the equitable sharing
21 of forfeited property;

22 “(H) transfer real or personal property
23 that is uneconomical to store, maintain, or mar-
24 ket to a State or local government agency for
25 use to support drug abuse treatment, drug and

1 crime prevention and education, housing, job
2 skills, and other community-based public health
3 and safety programs, upon agreement by the
4 recipient government to accept liability for the
5 compromise or settlement of any mortgages,
6 liens, petitions or other claims against the prop-
7 erty;

8 “(I) make any other disposition authorized
9 by law; and

10 “(J) warrant clear title to any subsequent
11 purchaser or transferee of such property.

12 The Attorney General shall make due provision for
13 the property rights of innocent persons in disposing
14 of forfeited property. Election of the method of dis-
15 position is solely within the discretion of the Attor-
16 ney General. Final orders of judgment for damages
17 arising from any warranty of title by the Attorney
18 General shall be satisfied pursuant to section 1304
19 of title 31, United States Code, in the same manner
20 and to the same extent as other judgments for dam-
21 ages. A decision by the Attorney General pursuant
22 to this subsection shall not be subject to review.”

23 (c) DEPOSIT FROM SETTLEMENT IN LIEU OF FOR-
24 FEITURE.—Section 524(c)(4)(A) of title 28, United States

1 Code, is amended by inserting “, or from any settlement
2 in lieu of forfeiture,” before “under any law”.

3 (d) DEPOSITS INTO THE FUND.—Section
4 524(c)(4)(B) of title 28, United States Code, is amended
5 by inserting “, and all amounts representing reimburse-
6 ment or recovery of costs paid by the Fund” immediately
7 prior to the semicolon.

8 (e) PAYMENT OF FOREIGN JUDGMENTS.—Section
9 524(c)(1) of title 28, United States Code, is amended by
10 inserting the following new subparagraph (J) immediately
11 following subparagraph (I):

12 “(J) at the discretion of the Attorney Gen-
13 eral, payments to return forfeited property re-
14 patriated to the United States by a foreign gov-
15 ernment or others acting at the direction of a
16 foreign government, and interest earned on
17 such property, subject to the following condi-
18 tions:

19 “(i) a final foreign judgment entered
20 against a foreign government or those act-
21 ing at its direction, which foreign judgment
22 was based on the measures, such as sei-
23 zure and repatriation of property, that re-
24 sulted in deposit of the funds into the
25 Fund;

1 “(ii) such foreign judgment was en-
2 tered and presented to the Attorney Gen-
3 eral within five years of the date that the
4 property was repatriated to the United
5 States;

6 “(iii) the foreign government or those
7 acting at its direction vigorously defended
8 its actions under its own laws; and

9 “(iv) the amount of the disbursement
10 does not exceed the amount of funds de-
11 posited to the Fund, plus interest earned
12 on such funds pursuant to section
13 524(c)(5) of title 28 United States Code,
14 less any awards and equitable shares paid
15 by the Fund to the foreign government or
16 those acting at its direction in connection
17 with a particular case.”.

18 (f) EXCESS SURPLUS FUNDS.—Section 524(c)(7) of
19 title 28, United States Code, as redesignated by this sec-
20 tion, is amended by deleting all versions of subparagraph
21 “(E)” and inserting the following in place thereof:

22 “(E) Subject to the notification procedures contained
23 in section 605 of Public Law 103–317, and after satisfy-
24 ing the transfer requirement in subparagraph (B) of this
25 paragraph, any excess unobligated balance remaining in

1 the Fund on September 30, 1996, and on September 30
 2 of each fiscal year thereafter, shall be available to the At-
 3 torney General, without fiscal year limitation, for any Fed-
 4 eral law enforcement, litigative/prosecutive, and correc-
 5 tional activities, or any other authorized purpose of the
 6 Department of Justice. Any Amounts provided pursuant
 7 to this subparagraph may be used under authorities avail-
 8 able to the organization receiving the funds.”

9 (g) REMISSION AND MITIGATION.—Section
 10 524(c)(1)(E) of title 28, United States Code, is amended
 11 to read as follows:

12 “(E) disbursements authorized in connec-
 13 tion with remission or mitigation procedures or
 14 other actions pursuant to the Attorney Gen-
 15 eral’s statutory authority relating to property
 16 forfeited under any law enforced or adminis-
 17 tered by the Department of Justice;”

18 **SEC. 411. CLARIFICATION OF SECTION 877 OF TITLE 21,**
 19 **UNITED STATES CODE.**

20 Section 507 of the Controlled Substances Act (21
 21 U.S.C. 877) is amended to add at the end the following
 22 sentence: “This section does not apply to any findings,
 23 conclusions, rulings, decisions, or declarations of the At-
 24 torney General, or any designee of the Attorney General,

1 relating to the seizure, forfeiture, or disposition of for-
 2 feited property brought under this subchapter.”

3 **SEC. 412. CERTIFICATE OF REASONABLE CAUSE.**

4 Section 2465 of title 28, United States Code, is
 5 amended—

6 (1) by striking “property seized” and inserting
 7 “property seized or arrested”; and

8 (2) by striking “seizure” each time it appears
 9 and inserting “seizure or arrest”.

10 **SEC. 413. CONFORMING TREASURY AND JUSTICE FUNDS.**

11 (a) Section 9703(c) of title 31, United States Code,
 12 is amended by striking “subsection (g)(2)” and inserting
 13 “subsection (g)(1)” and by deleting “in excess of
 14 \$10,000,000 for a fiscal year.”

15 (b) Section 9703(g) of title 31, United States Code,
 16 is amended—

17 (1) in paragraph (1), by striking “subsection
 18 (a)(1)” and inserting “subsections (a)(1) and (c)”;
 19 and

20 (2) in paragraph (2), by striking “subsections
 21 (a)(2) and (c)” and inserting “subsection (a)(2)”.

22 (c) **DEPOSIT FROM SETTLEMENT IN LIEU OF FOR-**
 23 **FEITURE.**—Section 9703(d) of title 31, United States
 24 Code, is amended by inserting “or from any settlement

1 in lieu of forfeiture,” before “under any law” each time
2 it appears.

3 (d) Subsection 524(c)(6) of title 28, United States
4 Code, is amended by adding the following sentence to the
5 end thereof: “Amounts transferred by the Secretary of
6 Treasury pursuant to section 9703 of title 31, or by the
7 Postmaster General pursuant to section 2003 of title 39,
8 shall be available to the Attorney General for Federal law
9 enforcement and criminal prosecution purposes of the De-
10 partment of Justice.”

11 **SEC. 414. DISPOSITION OF PROPERTY FORFEITED UNDER**
12 **CUSTOMS LAWS.**

13 Section 616A of the Tariff Act of 1930 (19 U.S.C.
14 1616a) is amended—

15 (1) by adding the following new paragraph to
16 subsection (c):

17 “(4) Whenever property is civilly or criminally
18 forfeited by or for the United States Customs Serv-
19 ice, including administrative forfeiture under the
20 provisions of this title, the Secretary of the Treasury
21 may dispose of the property in accordance with law,
22 including—

23 “(A) by selling the property through any
24 commercially feasible means, provided that the

1 property is not required to be destroyed by law
 2 and is not harmful to the public; or

3 “(B) by requesting the General Services
 4 Administration to take custody of the property
 5 and to dispose of it in accordance with law.”;
 6 and

7 (2) by amending the title of the section to read
 8 as follows: “**RETENTION, TRANSFER, OR DIS-**
 9 **POSITION OF FORFEITED PROPERTY”.**

10 **SEC. 415. TECHNICAL AMENDMENTS RELATING TO OBLIT-**
 11 **ERATED MOTOR VEHICLES IDENTIFICATION**
 12 **NUMBERS.**

13 Section 512 of title 18, United States Code, is
 14 amended—

15 (1) in subsection (b), by inserting “and the pro-
 16 visions of chapter 46 of this title relating to civil ju-
 17 dicial forfeitures” before “shall apply”; and

18 (2) in subsection (a)(1), by striking “does not
 19 know” and all that follows up to the semicolon and
 20 inserting “is an innocent owner as defined in section
 21 983 of this title”.

22 **SEC. 416. FUGITIVE DISENTITLEMENT.**

23 (a) IN GENERAL.—Chapter 163 of title 28, United
 24 States Code, is amended by inserting the following new
 25 section:

1 **§ 2467. Fugitive disentitlement**

2 “Any person who, in order to avoid criminal prosecu-
 3 tion, purposely leaves the jurisdiction of the United States,
 4 declines to enter or reenter the United States to submit
 5 to its jurisdiction, or otherwise evades the jurisdiction of
 6 the court where a criminal case is pending against the per-
 7 son, may not use the resources of the courts of the United
 8 States in furtherance of a claim in any related civil forfeit-
 9 ure action or a claim in third-party proceedings in any
 10 related criminal forfeiture action.”

11 (b) CONFORMING AMENDMENT.—The chapter analy-
 12 sis for chapter 163 of title 28, United States Code, is
 13 amended by inserting the following at the end:

“2467. Fugitive disentitlement.”

14 **SEC. 417. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.**

15 (a) IN GENERAL.—Chapter 163 of title 28, United
 16 States Code, is amended by adding at the end the follow-
 17 ing new section:

18 **§ 2468. Foreign records**

19 “(a) In a civil proceeding in a court of the United
 20 States, including civil forfeiture proceedings and proceed-
 21 ings in the United States Claims Court and the United
 22 States Tax Court, a foreign record of regularly conducted
 23 activity, or copy of such record, obtained pursuant to an
 24 official request, shall not be excluded as evidence by the
 25 hearsay rule of a foreign certification, also obtained pursu-

1 ant to the same official request or subsequent official re-
2 quest that adequately identifies such foreign record, at-
3 tests that—

4 “(1) such record was made, at or near the time
5 of the occurrence of the matters set forth, by (or
6 from information transmitted by) a person with
7 knowledge of those matters;

8 “(2) such record was kept in the course of a
9 regularly conducted business activity;

10 “(3) the business activity made such a record
11 as a regular practice; and

12 “(4) if such record is not the original, such
13 record is a duplicate of the original;

14 unless the source of information or the method or cir-
15 cumstances of preparation indicate lack of trust-
16 worthiness.

17 “(b) A foreign certification under this section shall
18 authenticate such record or duplicate.

19 “(c) As soon as practicable after a responsive plead-
20 ing has been filed, a party intending to offer in evidence
21 under this section a foreign record of regularly conducted
22 activity shall provide written notice of that intention to
23 each other party. A motion opposing admission in evidence
24 of such record shall be made by the opposing party and
25 determined by the court before trial. Failure by a party

1 to file such motion before trial shall constitute a waiver
2 of objection to such record or duplicate, but the court for
3 cause shown may grant relief from the waiver.

4 “(d) As used in this section, the term—

5 “(1) ‘foreign record of regularly conducted ac-
6 tivity’ means a memorandum, report, record, or data
7 compilation, in any form, of acts, events, conditions,
8 opinions, or diagnoses, maintained in a foreign coun-
9 try;

10 “(2) ‘foreign certification’ means a written dec-
11 laration made and signed in a foreign country by the
12 custodian of a record of regularly conducted activity
13 or another qualified person, that if falsely made,
14 would subject the maker to criminal penalty under
15 the law of that country;

16 “(3) ‘business’ includes business, institution,
17 association, profession, occupation, and calling of
18 every kind whether or not conducted for profit; and

19 “(4) ‘official request’ means a letter rogatory, a
20 request under an agreement, treaty or convention, or
21 any other request for information or evidence made
22 by a court of the United States or an authority of
23 the United States having law enforcement respon-
24 sibility, to a court or other authority of a foreign
25 country.”

1 (b) CONFORMING AMENDMENT.—The chapter analy-
 2 sis for chapter 163 of title 28, United States Code, is
 3 amended by inserting the following at the end:

“2468. Foreign records.”

4 **SEC. 418. DESTRUCTION OR REMOVAL OF PROPERTY TO**
 5 **PREVENT SEIZURE.**

6 (a) Section 2232(a) of title 18, United States Code,
 7 is amended by—

8 (1) inserting “or seizure” after “Physical inter-
 9 ference with search”;

10 (2) inserting “, including seizure for forfeit-
 11 ure,” after “after seizure”;

12 (3) striking “searches and seizures” after “au-
 13 thorized to make” and inserting “searches or sei-
 14 zures”;

15 (4) striking “or” after “wares,”; and

16 (5) inserting “, or other property, real or per-
 17 sonal,” after “merchandise.”

18 (b) Section 2232(b) of title 18, United States Code,
 19 is amended by—

20 (1) inserting “or seizure” after “Notice of
 21 search”;

22 (2) striking “searches and seizures” after “au-
 23 thorized to make” and inserting “searches or sei-
 24 zures”;

1 (3) inserting “, including seizure for forfeit-
2 ure,” after “likely to make a search or seizure”; and

3 (4) inserting “real or personal,” after “mer-
4 chandise or other property,”.

5 **SEC. 419. PROSPECTIVE APPLICATION**

6 (a) IN GENERAL.—Unless otherwise specified in this
7 section or in another provision of this Act, all amendments
8 in this Act shall apply to forfeiture proceedings com-
9 menced on or after the effective date of this Act.

10 (b) ADMINISTRATIVE FORFEITURES.—All amend-
11 ments in this Act relating to seizures and administrative
12 forfeitures shall apply to seizures and forfeitures occurring
13 on or after the sixtieth day after the effective date of this
14 Act.

15 (c) CIVIL JUDICIAL FORFEITURES.—All amendments
16 in this Act relating to the judicial procedures applicable
17 once a civil forfeiture complaint is filed by the government
18 shall apply to all cases in which the forfeiture complaint
19 is filed on or after the sixtieth day after the effective date
20 of this Act.

21 (d) CRIMINAL FORFEITURE.—All amendments in
22 this Act relating to the procedures applicable in criminal
23 forfeiture cases shall apply to cases in which the indict-
24 ment or information is filed on or after the effective date
25 of this Act.

1 (e) SUBSTANTIVE LAW.—All amendments in this Act
 2 expanding substantive forfeiture law to make property
 3 subject to civil or criminal forfeiture which was not pre-
 4 viously subject to forfeiture shall apply to offenses occur-
 5 ring on or after the effective date of this Act.

6 **TITLE V—CRIMINAL FORFEITURE**

7 **SEC. 501. UNIFORM PROCEDURES FOR CRIMINAL FORFEIT-** 8 **URE**

9 (a) IN GENERAL.—Section 982(b)(1) of title 18,
 10 United States Code, is amended to read as follows:

11 “(b)(1) The forfeiture of property under this section,
 12 including any seizure and disposition of the property and
 13 any related administrative or judicial proceeding, shall be
 14 governed by the provisions of section 413 of the Com-
 15 prehensive Drug Abuse Prevention and Control Act of
 16 1970 (21 U.S.C. 853), except for subsection 413(d) which
 17 shall not apply to forfeitures under this section.”

18 (b) RICO.—Section 1963 of title 18, United States
 19 Code, is amended by repealing subsections (b) through
 20 (m) and inserting the following after subsection (a):

21 “(b) The forfeiture of property under this section, in-
 22 cluding any seizure and disposition of the property and
 23 any related administrative or judicial proceeding, shall be
 24 governed by the provisions of section 413 of the Com-
 25 prehensive Drug Abuse Prevention and Control Act of

1 1970 (21 U.S.C. 853), except for subsection 413(d) which
2 shall not apply to forfeitures under this section.”

3 (c) OBSCENITY.—Section 1466 of title 18, United
4 States Code, is amended by repealing subsections (b)
5 through (n) and inserting the following after subsection
6 (a):

7 (b) The forfeiture of property under this section, in-
8 cluding any seizure and disposition of the property and
9 any related administrative or judicial proceeding, shall be
10 governed by the provisions of section 413 of the Com-
11 prehensive Drug Abuse Prevention and Control Act of
12 1970 (21 U.S.C. 853), except for subsection 413(d) which
13 shall not apply to forfeitures under this section.”

14 (d) CHILD PORNOGRAPHY.—Section 2253 of title 18,
15 United States Code, is amended by repealing subsections
16 (b) through (o) and inserting the following after sub-
17 section (a):

18 “(b) The forfeiture of property under this section, in-
19 cluding any seizure and disposition of the property and
20 any related administrative or judicial proceeding, shall be
21 governed by the provisions of section 413 of the Com-
22 prehensive Drug Abuse Prevention and Control Act of
23 1970 (21 U.S.C. 853), except for subsection 413(d) which
24 shall not apply to forfeitures under this section.”

1 (e) ESPIONAGE.—Section 794(d)(3) of title 18, Unit-
2 ed States Code, is amended to read as follows:

3 “(3) The forfeiture of property under this section, in-
4 cluding any seizure and disposition of the property and
5 any related administrative or judicial proceeding, shall be
6 governed by the provisions of section 413 of the Com-
7 prehensive Drug Abuse Prevention and Control Act of
8 1970 (21 U.S.C. 853), except for subsection 413(d) which
9 shall not apply to forfeitures under this section.”

10 (f) FIREARMS.—Section 3665 of title 18, United
11 States Code, is amended by—

12 (1) redesignating the first unnumbered para-
13 graph as subsection (a)(1) and the second unnum-
14 bered paragraph as subsection (a)(2); and

15 (2) by adding the following subsection at the
16 end:

17 “(b) The forfeiture of property under this section, in-
18 cluding any seizure and disposition of the property and
19 any related administrative or judicial proceeding, shall be
20 governed by the provisions of section 413 of the Com-
21 prehensive Drug Abuse Prevention and Control Act of
22 1970 (21 U.S.C. 853), except for subsection 413(d) which
23 shall not apply to forfeitures under this section.”

24 (g) FOOD STAMP FRAUD.—15(h) of the Food Stamp
25 Act of 1977 (7 U.S.C. 2024(h)) is amended—

1 (1) by striking paragraphs (1), (2) and (3) and
2 inserting the following:

3 “(1) The court, in imposing sentence on any
4 person convicted of a violation of subsection (b) or
5 (c), shall order, in addition to any other sentence
6 imposed under this section and irrespective of any
7 provision of State law, that the person forfeit to the
8 United States—

9 “(A) any of such person’s property used in
10 a transaction or attempted transaction, to com-
11 mit or to facilitate the commission of such vio-
12 lation (other than a misdemeanor); and

13 (B) any property, real or personal, con-
14 stituting, derived from, or traceable to any pro-
15 ceeds such person obtained directly or indirectly
16 as a result of such violation.

17 “(2) All property subject to forfeiture under
18 this subsection, any seizure and disposition thereof,
19 and any proceeding relating thereto, shall be gov-
20 erned by section 413 of the Comprehensive Drug
21 Abuse Prevention and Control Act of 1970 (21
22 U.S.C. 853, with the exception of subsection (d)
23 which shall not apply to forfeitures under this sec-
24 tion.”; and

1 (2) by redesignating paragraph (4) as para-
2 graph (3).

3 (h) IMMIGRATION OFFENSES.—The second para-
4 graph (6) of subsection 982(a) of title 18, United States
5 Code, is amended by striking “(A)” and all of subpara-
6 graph (B).

7 **SEC. 502. USE OF CRIMINAL FORFEITURE AS AN ALTER-**
8 **NATIVE TO CIVIL FORFEITURE.**

9 Section 2461 of title 28, United States Code, is
10 amended by adding the following subsection:

11 “(c) Whenever a forfeiture of property is authorized
12 in connection with a violation of an Act of Congress, and
13 any person is charged in an indictment or information
14 with such violation but no specific statutory provision is
15 made for criminal forfeiture upon conviction, the govern-
16 ment may include the forfeiture in the indictment or infor-
17 mation in accordance with the Federal Rules of Criminal
18 Procedure, and upon conviction, the court shall order the
19 forfeiture of the property in accordance with the proce-
20 dures set forth in section 413 of the Comprehensive Drug
21 Abuse Prevention and Control Act of 1970 (21 U.S.C.
22 853).”

1 **SEC. 503. FEDERAL RULES OF CRIMINAL PROCEDURE.**

2 (a) IN GENERAL.—The Federal Rules of Criminal
3 Procedure are amended by inserting the following new rule
4 after rule 32.1:

5 **§ 32.2 Criminal forfeiture**

6 “(a) INDICTMENT AND INFORMATION.—No judgment
7 of forfeiture may be entered in a criminal proceeding un-
8 less the indictment or the information alleges that the de-
9 fendant or defendants have an interest in property that
10 is subject to forfeiture in accordance with the applicable
11 statute.

12 “(b) HEARING AND ENTRY OF PRELIMINARY ORDER
13 OF FORFEITURE AFTER VERDICT.—Within 10 days of en-
14 tering a verdict of guilty or accepting a plea of guilty or
15 nolo contendere on any count in the indictment or infor-
16 mation for which criminal forfeiture is alleged, the court
17 must determine what property is subject to forfeiture be-
18 cause of its relationship to the offense. The determination
19 may be based on evidence already in the record, including
20 any written plea agreement, or on evidence adduced at a
21 post-trial hearing. If the court finds that property is sub-
22 ject to forfeiture, it must enter a preliminary order direct-
23 ing the forfeiture of whatever interest each defendant may
24 have in the property, without determining what that inter-
25 est may be. A determination of the extent of each defend-
26 ant’s interest in the property will be deferred until any

1 third party claiming an interest in the property has peti-
2 tioned the court pursuant to statute for consideration of
3 the claim. If no such petition is timely filed, the property
4 is presumed to be the property of the defendant or defend-
5 ants and is forfeited in its entirety.

6 “(c) PRELIMINARY ORDER OF FORFEITURE.—The
7 entry of a preliminary order of forfeiture will authorize
8 the Attorney General to seize the property subject to for-
9 feiture, to conduct such discovery as the court may deem
10 proper to facilitate the identification, location or disposi-
11 tion of the property, and to commence proceedings consist-
12 ent with any statutory requirements pertaining to third-
13 party rights. At the time of sentencing (or at any time
14 before sentencing if the defendant consents), the order of
15 forfeiture becomes final as to the defendant, and must be
16 made a part of the sentence and included in the judgment.
17 The court may include in the order of forfeiture whatever
18 conditions are reasonably necessary to preserve the prop-
19 erty value pending any appeal.

20 “(d) ANCILLARY PROCEEDINGS.—(1) If, as pre-
21 scribed by statute, a third party files a petition asserting
22 an interest in the forfeited property, the court must con-
23 duct an ancillary proceeding. In that proceeding, the court
24 may entertain a motion to dismiss the petition for lack
25 of standing, for failure to state a claim upon which relief

1 could be granted, or for any other ground. For purposes
2 of the motion, all facts set forth in the petition must be
3 assumed to be true.

4 “(2) If a motion referred to in paragraph (1) is de-
5 nied, or if no such motion is made, the court may permit
6 the parties to conduct discovery in accordance with the
7 Federal Rules of Civil Procedures to the extent that the
8 court determines such discovery to be necessary or desir-
9 able to resolve factual issues before conducting an evi-
10 dentiary hearing. At the conclusion of this discovery, ei-
11 ther party may seek to have the court dispose of the peti-
12 tion on a motion for summary judgment in the manner
13 described in rule 56 of the Federal Rules of Civil Proce-
14 dure.

15 “(3) At the conclusion of the ancillary proceeding, the
16 court must enter a final order of forfeiture amending the
17 preliminary order as necessary to take into account the
18 disposition of any third-party petition.

19 “(4) If multiple petitions are filed in the same case,
20 an order dismissing or granting fewer than all of the peti-
21 tions is not appealable until all petitions are resolved, un-
22 less the court determines that there is no just reason for
23 delay and directs the entry of final judgment with respect
24 to one or more but fewer than all of the petitions.

1 “(e) STAY OF FORFEITURE PENDING APPEAL.—If
2 the defendant appeals from the conviction or order of for-
3 feiture, the court may stay the order of forfeiture upon
4 such terms as the court finds appropriate to ensure that
5 the property remains available in case the conviction or
6 order of forfeiture is vacated. But the stay will not delay
7 the conduct of the ancillary proceeding or the determina-
8 tion of the rights or interests of any third party. If the
9 defendant’s appeal is still pending when the court deter-
10 mines that the order of forfeiture must be amended to rec-
11 ognize third party’s interest in the property, the court
12 must amend the order of forfeiture but must refrain from
13 directing the transfer of any property or interest to the
14 third party until the defendant’s appeal is final, unless the
15 defendant, in writing, consents to the transfer of the prop-
16 erty or interest to the third party.

17 “(f) SUBSTITUTE PROPERTY.—If the applicable for-
18 feiture statute authorizes the forfeiture of substitute prop-
19 erty, the court may at any time entertain a motion by the
20 Government to order forfeiture of substitute property. If
21 the Government makes the requisite showing, the court
22 must enter an order forfeiting the substitute property, or
23 must amend an existing preliminary or final order to in-
24 clude that property.”

1 (b) CONFORMING AMENDMENTS.—(1) Rules 7(c)(2),
 2 31(e), and 32(d)(2), Federal Rules of Criminal Procedure,
 3 are repealed.

4 (2) Rule 38(e), Federal Rules of Criminal Procedure,
 5 is amended by striking “3554,” and by striking “Criminal
 6 Forfeiture” in the heading.

7 (c) ORDER OF FORFEITURE.—Section 3554 of title
 8 18, United States Code, is amended—

9 (1) by striking “an offense described in section
 10 1962 of this title or in title II or III of the Com-
 11 prehensive Drug Abuse Prevention and Control Act
 12 of 1970” and inserting “an offense for which crimi-
 13 nal forfeiture is authorized”; and

14 (2) by inserting “pursuant to the Federal Rules
 15 of Criminal Procedure,” after “shall order,”.

16 **SEC. 504. PRE-TRIAL RESTRAINT OF SUBSTITUTE ASSETS.**

17 Section 413(e)(1) of the Controlled Substances Act
 18 (21 U.S.C. 853(e)(1)) is amended by striking “(a)” and
 19 inserting “(a) or (p)”.

20 **SEC. 505. REPATRIATION OF PROPERTY PLACED BEYOND**
 21 **THE JURISDICTION OF THE COURT.**

22 (A) ORDER OF FORFEITURE.—Section 413(p) of the
 23 Controlled Substance Act (21 U.S.C. 853(p)) is amended
 24 by inserting the following at the end: “In the case of prop-
 25 erty described in paragraph (3), the court may, in addi-

tion, order the defendant to return the property to the jurisdiction of the court so that it may be seized and forfeited.”

(b) PRE-TRIAL RESTRAINING ORDER.—Section 413(e) of the Controlled Substance Act (21 U.S.C. 853(e)) is amended by adding the following after paragraph (3):

“(4) Pursuant to its authority to enter a pre-trial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may also order the defendant to repatriate any property subject to forfeiture pending trial, and to deposit that property in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account. Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence for the offense giving rise to the forfeiture under the obstruction of justice provision of section 3C1.1 of the United States Sentencing Guidelines.”.

**SEC. 506. HEARINGS ON PRE-TRIAL RESTRAINING ORDERS;
ASSETS NEEDED TO PAY ATTORNEY’S FEES.**

Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended—

1 (1) in paragraph (3), by adding the following
2 after the period: “The court shall issue any protec-
3 tive order necessary to prevent the premature disclo-
4 sure of any ongoing law enforcement operation or in-
5 vestigation or the identity of any witness at the
6 hearing. In addition, in any case involving an ongo-
7 ing investigation, the court shall permit the presen-
8 tation of evidence in camera or under seal. Rule 65,
9 Federal Rules of Civil Procedure, shall not apply to
10 restraining orders issued under this subsection.”;
11 and

12 (2) by adding the following new paragraph:

13 “(5)(A) When property is restrained pre-trial
14 subject to paragraph (1)(A), the court may, at the
15 request of the defendant, hold a pre-trial hearing to
16 determine whether the restraining order should be
17 vacated or modified with respect to some or all of
18 the restrained property because—

19 “(i) it restrains property that would not be
20 subject to forfeiture even if all of the facts set
21 forth in the indictment were established as true;

22 “(ii) it causes a substantial hardship to the
23 moving party and less intrusive means exist to
24 preserve the subject property for forfeiture; or

1 “(iii) the defendant establishes that he or
2 she has no assets, other than the restrained
3 property, available to exercise his or her con-
4 stitutional right to retain counsel, and there is
5 no probable cause to believe that the restrained
6 property is subject to forfeiture.

7 “(B) If the defendant files a motion under sub-
8 paragraph (A)(iii), the court shall require the de-
9 fendant to establish that he has no access to other
10 assets adequate for the payment of criminal defense
11 counsel before conducting any probable cause in-
12 quiry. The Government shall have an opportunity to
13 cross-examine the defendant and any witnesses he or
14 she may present on this issue. If the court deter-
15 mines that the defendant has established that he has
16 no access to other assets, it shall hold a hearing to
17 determine whether there is probable cause for the
18 forfeiture of the defendant’s property. If the court
19 determines that no probable cause exists for the for-
20 feiture of an asset, it shall modify the restraining
21 order to the extent necessary to permit the defend-
22 ant to use that asset to retain counsel.

23 “(C) In any hearing under this paragraph
24 where probable cause is at issue, the court shall
25 limit its inquiry to the existence of probable cause

1 for the forfeiture, and shall neither entertain chal-
2 lenges to the validity of the indictment, nor require
3 the Government to produce additional evidence re-
4 garding the facts of the case to support the grand
5 jury's finding of probable cause regarding the crimi-
6 nal offense giving rise to the forfeiture. In all cases,
7 the party requesting the modification of the restrain-
8 ing order shall bear the burden of proof.

9 “(D) A person other than the defendant who
10 has a legal interest in the restrained property may
11 move to modify or vacate the restraining order for
12 the reasons stated in subparagraph (A)(ii). In ac-
13 cordance with subsection (k), however, such person
14 may not object to a restraining order on grounds
15 that may be asserted only in the ancillary hearing
16 pursuant to subsection (n).

17 “(E) If the property restrained is subject to for-
18 feiture as substitute assets, the court shall exempt
19 from the restraining order assets needed to pay at-
20 torneys fees, other necessary cost-of-living expenses,
21 and expenses of maintaining the restrained assets.”.

22 **SEC. 507. CRIMINAL SEIZURE WARRANTS.**

23 Section 413(f) of the Controlled Substances Act (21
24 U.S.C. 853(f)) is amended to read as follows:

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding the following new subsection after subsection (p):

13 “(q) STANDARD OF PROOF.—In any forfeiture action
14 under this section, the party bearing the burden of proof
15 shall be required to prove the matter at issue by a prepon-
16 derance of the evidence.”.

(a) POST-CONVICTION DISCOVERY.—Section 413(m) of the Controlled Substances Act (21 U.S.C. 853(m)) is amended by—

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1 (2) adding the following additional sentence:

2 “Because this subsection applies only to matters oc-
3 ccurring after the defendant has been convicted and
4 his property has been declared forfeited, the provi-
5 sions of rule 15 requiring the consent of the defend-
6 ant and the presence of the defendant at the deposi-
7 tion shall not apply.”

8 (b) BANK RECORDS.—Section 986 of title 18, United
9 States Code, is amended—

10 (1) in subsection (a) by striking “in rem”; and

11 (2) in subsection (c) by inserting “or Criminal”
12 after “Civil”.

13 **SEC. 510. COLLECTION OF CRIMINAL FORFEITURE JUDG-**
14 **MENT.**

15 Section 413 of the Controlled Substances Act (21
16 U.S.C. 853) is amended by adding the following sub-
17 section after subsection (q):

18 “(r) COLLECTION OF CRIMINAL FORFEITURE JUDG-
19 MENT.—In addition to the authority otherwise provided
20 in this section, an order of forfeiture may be enforced—

21 “(1) in the manner provided for the collection
22 and payment of fines in subchapter B of chapter
23 229 of title 18, United States Code; or

24 “(2) in the same manner as a judgment in a
25 civil action.”

1 **SEC. 511. APPEALS IN CRIMINAL FORFEITURE CASES.**

2 (a) PRE-TRIAL DISMISSAL OF FORFEITURE
3 COUNT.—Section 3731 of title 18, United States Code,
4 is amended in the first unnumbered paragraph by insert-
5 ing “, or dismissing a forfeiture count in whole or in part,”
6 after “order of a district court dismissing an indictment
7 or information”.

8 (b) REVIEW OF A SENTENCE.—Section 3742 of title
9 18, United States Code, is amended by inserting the fol-
10 lowing new subsection:

11 “(i) FORFEITURE ORDERS.—The Government may
12 file a notice of appeal in the district court of any decision,
13 judgment, or order of a district court denying a forfeiture
14 in whole or in part, or mitigating a forfeiture for constitu-
15 tional reasons, except that no appeal shall lie where the
16 double jeopardy clause of the United States Constitution
17 prohibits further prosecution.”

18 **SEC. 512. NON-ABATEMENT OF FORFEITURE WHEN DE-**
19 **FENDANT DIES PENDING APPEAL.**

20 Section 413 of the Controlled Substances Act (21
21 U.S.C. 853) is amended by adding at the end the following
22 new subsection:

23 “(s) NONABATEMENT OF FORFEITURE ORDER.—An
24 order of forfeiture under this section shall not abate by
25 reason of the death thereafter of any or all of the defend-
26 ants or petitioners or potential petitioners.”

1 **SEC. 513. STANDING OF THIRD PARTIES TO CONTEST**
2 **CRIMINAL FORFEITURE ORDERS.**

3 Section 413(n)(2) of the Controlled Substances Act
4 (21 U.S.C. 853(n)(2)), is amended by designating the
5 present matter as subparagraph (A) and by adding the
6 following paragraphs at the end:

7 “(B) Notwithstanding any provision of this section,
8 no person may assert a legal right, title or interest under
9 this section in contraband or other property that it is ille-
10 gal to possess. In addition, except as set forth in sub-
11 section (n)(6)(B), no person may assert an ownership in-
12 terest under this section in the illegal proceeds of a crimi-
13 nal act, irrespective of State property law.

14 “(C) For the purposes of this section, a ‘legal inter-
15 est’ includes, but is not limited to, a lien, mortgage, re-
16 corded security device or valid assignment of an ownership
17 interest. A ‘legal interest’ does not include: (i) a general
18 unsecured interest in, or claim against, the property or
19 estate of the defendant; (ii) a bailment; (iii) a possessory
20 interest or title held by a nominee who exercises no domin-
21 ion or control over the property; or (iv) a constructive
22 trust.”

23 **SEC. 514. MOTION AND DISCOVERY PROCEDURES FOR AN-**
24 **CILLARY HEARINGS.**

25 Section 413(n)(4) of the Controlled Substances Act
26 (21 U.S.C. 853(n)(4)) is amended by designating the

1 present matter as subparagraph (A), and by inserting the
2 following new subparagraphs:

3 “(B) Before conducting a hearing, the court
4 may entertain a motion to dismiss the petition for
5 lack of standing, for failure to state a claim upon
6 which relief could be granted under this section, or
7 for any other ground. For the purposes of such mo-
8 tion, all facts set forth in the petition shall be as-
9 sumed to be true.

10 “(C) If a motion referred to in subparagraph
11 (B) is denied, or if no such motion is made, the
12 court may, in its discretion, permit the parties to
13 conduct discovery in accordance with the Federal
14 Rules of Civil Procedure to the extent that the court
15 determines such discovery to be necessary or desir-
16 able to resolve factual issues before the hearing. At
17 the conclusion of such discovery, either party may
18 seek to have the court dispose of the petition on a
19 motion for summary judgment in the manner de-
20 scribed in rule 56 of the Federal Rules of Civil Pro-
21 cedure.

22 “(D) Any order disposing of a petition pursuant
23 to a motion or pursuant to a hearing on the merits
24 of the claim shall be appealable in accordance with
25 the Federal Rules of Appellate Procedure applicable

1 to civil cases. However, where multiple petitions are
2 filed in the same case, an order dismissing or grant-
3 ing fewer than all of the petitions shall not be ap-
4 pealable until all petitions are resolved, unless the
5 court expressly determines that there is no just rea-
6 son for delay and directs the entry of final judgment
7 with respect to one or more but fewer than all of the
8 petitions.

9 “(E) The district court shall retain jurisdiction
10 over a petition filed pursuant to this subsection not-
11 withstanding any appeal filed by the defendant in
12 the criminal case.”

13 **SEC. 515. INTERVENTION BY THE DEFENDANT IN THE AN-**
14 **CILLARY PROCEEDING.**

15 Section 413(n) of the Controlled Substances Act (21
16 U.S.C. 853(n)) is amended by adding the following after
17 paragraph (7):

18 “(8) If the defendant has filed a timely appeal
19 from a conviction under this section and the appeal
20 is pending, any person filing a petition under this
21 subsection shall serve a copy of the petition upon the
22 defendant, and the defendant shall have a right to
23 intervene in the ancillary proceeding with respect to
24 the petition in accordance with rule 24 of the Fed-
25 eral Rules of Civil Procedure solely for the purpose

1 of contesting the petitioner’s alleged interest in the
2 property ordered forfeited. The defendant shall have
3 20 days from the date of service of the petition to
4 intervene. If the defendant does not intervene within
5 such time period, he or she shall have waived the
6 right to challenge in any forum any adjudication of
7 the petitioner’s interest in the property pursuant to
8 this subsection, regardless of the outcome of the ap-
9 peal.

10 “(9) A hearing provided for in this subsection
11 shall be limited to an adjudication of the validity of
12 the petitioner’s legal right, title or interest in the
13 property ordered forfeited, and shall not provide a
14 forum to relitigate the forfeitability of the prop-
15 erty.”

16 **SEC. 516. IN PERSONAM JUDGMENTS.**

17 Section 413(n)(1) of the Controlled Substances Act
18 (21 U.S.C. 853(n)(1)) is amended by adding the following
19 sentence at the end “To the extent that the order of for-
20 feiture includes only an in personam money judgment
21 against the defendant, or includes only property constitut-
22 ing contraband, no proceeding under this subsection shall
23 be necessary.”

1 **SEC. 517. RIGHT OF THIRD PARTIES TO CONTEST FORFEIT-**
2 **URE OF SUBSTITUTE ASSETS.**

3 (a) IN GENERAL.—Section 413(c) of the Controlled
4 Substances Act (21 U.S.C. 853(c)), as amended by this
5 Act, is further amended by—

6 (1) inserting the following after the first sen-
7 tence: “All right, title and interest in property de-
8 scribed in subsection (p) of this section vests in the
9 United States at the time an indictment, informa-
10 tion or bill of particulars specifically describing the
11 property as substitute assets is filed.”; and

12 (2) by striking “Any such property that is sub-
13 sequently transferred to a person other than the de-
14 fendant” and inserting “Any property that is trans-
15 ferred to a person other than the defendant after the
16 United States’ interest in the property has vested
17 pursuant to this subsection”.

18 (b) CONFORMING AMENDMENT.—Section 413(n)(6)
19 of the Controlled Substances Act (21 U.S.C. 853(n)(6))
20 is amended by adding at the end the following sentence:
21 “In the case of substitute assets, the petitioner must show
22 that his interest in the property existed at the time the
23 property vested in the United States pursuant to sub-
24 section (c), or that he subsequently acquired his interest
25 in the property as a bona fide purchaser for value as pro-
26 vided in this subsection.”

1 **SEC. 518. FORFEITABLE PROPERTY TRANSFERRED TO**
2 **THIRD PARTIES.**

3 Section 413(c) of the Controlled Substances Act (21
4 U.S.C. 853(c)), as amended by this Act, is further amend-
5 ed by designating the present matter as paragraph (1) and
6 adding the following new paragraph:

7 “(2) If, as provided in paragraph (1), property
8 transferred to a transferee is ordered forfeited and
9 the transferee fails to establish that he is a bona fide
10 purchaser, but the transferee is unable, due to the
11 transferee’s act or omission, to turn the property
12 over to the United States, the transferee shall owe
13 the United States a sum of money up to the value
14 of the property transferred by the defendant, plus
15 interest from the time of the transfer. Once the an-
16 cillary proceedings regarding the transferee’s claim
17 to be a bona fide purchaser are concluded, the dis-
18 trict court that issued the order of forfeiture shall
19 issue a judgment in favor of the United States and
20 against the transferee for the amount of money to
21 which the United States is entitled.”

22 **SEC. 519. FORFEITURE THIRD PARTY INTERESTS IN CRIMI-**
23 **NAL CASES.**

24 (a) IN GENERAL.—Section 413 of the Controlled
25 Substances Act (21 U.S.C. 853) is amended by adding the
26 following after subsection (s):

1 “(t) FORFEITURE OF THIRD PARTY INTERESTS.—In
2 lieu of filing a parallel civil forfeiture action, the govern-
3 ment may seek the forfeiture of a third party’s interest
4 in property subject to forfeiture under this section at the
5 conclusion of the ancillary proceeding described in sub-
6 section (n). Such proceeding shall be an in rem proceeding
7 in which the third party shall first have the burden of es-
8 tablishing a legal interest in the property pursuant to sub-
9 section (n), after which the government shall have the bur-
10 den of establishing the forfeitability of the third party’s
11 interest in the manner provided for civil forfeitures in
12 chapter 46, title 18, United States Code, and the third
13 party shall have the burden of establishing an innocent
14 owner defense pursuant to such chapter.”

15 (b) CONFORMING AMENDMENT.—Section 413(n)(6)
16 of the Controlled Substances Act (21 U.S.C. 853(n)(6))
17 is amended by adding “, unless the government notifies
18 the court that it will seek to forfeit the petitioner’s interest
19 pursuant to subsection (t)” after “in accordance with its
20 determination”.

21 **SEC. 520. SEVERANCE OF JOINTLY HELD PROPERTY.**

22 Section 413 of the Controlled Substances Act (21
23 U.S.C. 853) is amended by adding the following after sub-
24 section (t):

1 “(u) SEVERANCE OF JOINTLY HELD PROPERTY.—
2 If the court determines, pursuant to subsection (n) or (t),
3 that a third party had a partial interest in property other-
4 wise subject to forfeiture, or a joint tenancy or tenancy
5 by the entirety in such property, the court shall enter an
6 appropriate order (1) severing the property; (2) transfer-
7 ring the property to the government with a provision that
8 the government compensate the third party to the extent
9 of his or her ownership interest once a final order of for-
10 feiture has been entered and the property has been re-
11 duced to liquid assets, or (3) permitting the third party
12 to retain the property subject to a lien in favor of the Gov-
13 ernment to the extent of the forfeitable interest in the
14 property. To effectuate the purposes of this subsection, a
15 joint tenancy or tenancy by the entireties shall be con-
16 verted to a tenancy in common by order of the court, irre-
17 spective of State law.”

18 **SEC. 521. VICTIM RESTITUTION.**

19 Section 413 of the Controlled Substances Act (21
20 U.S.C. 853) is amended by adding at the end the following
21 new subsection:

22 “(v) VICTIMS AND RESTITUTION.—

23 “(1) The defendant may not use property sub-
24 ject to forfeiture under this section to satisfy an
25 order of restitution. However, if there are identifi-

1 able victims entitled to restitution from the defend-
2 ant, and the defendant has no assets other than the
3 property subject to forfeiture with which to pay res-
4 titution to the victims, the Government may move to
5 dismiss the forfeiture allegations before entry of a
6 judgment of forfeiture to allow the property to be
7 used by the defendant to pay restitution in whatever
8 manner the court determines to be appropriate if it
9 grants the Government’s motion.

10 “(2) If an order of forfeiture is entered pursu-
11 ant to this section and the defendant has no assets
12 other than the forfeited property to pay restitution
13 to identifiable victims who are entitled to restitution,
14 the Government shall restore the forfeited property
15 to the victims pursuant to subsection (i)(1) once the
16 ancillary proceeding under subsection (n) has been
17 completed and the costs of the forfeiture action have
18 been deducted. On the motion of the Government,
19 the court may enter any order necessary to facilitate
20 the distribution of the property under this sub-
21 section.

22 “(3) For purposes of this subsection, a ‘victim’
23 is a person other than a person with a legal right,
24 title, or interest in the forfeited property sufficient
25 to satisfy the standing requirements of subsection

1 (n)(2) who may nevertheless be entitled to restitu-
2 tion from the forfeited funds pursuant to 28 CFR
3 part 9.8. A person shall be considered a ‘victim’ if
4 the person is the victim of the offense giving rise to
5 the forfeiture, or of any offense that was part of the
6 same scheme, conspiracy, or pattern of criminal ac-
7 tivity, including in the case of a money laundering
8 offense, any offense constituting the underlying
9 specified unlawful activity.”.

10 **SEC. 522. DELIVERY OF PROPERTY TO THE MARSHALS**
11 **SERVICE.**

12 Section 413(j) of the Controlled Substances Act (21
13 U.S.C. 853(j)) is amended by inserting “, and rule C(5)
14 of the Supplemental Rules for Certain Admiralty and Mar-
15 itime Claims,” before “shall apply to a criminal forfeit-
16 ure”.

○